

A  
DEFENCE  
OF THE  
LAYMAN'S LETTER,  
IN  
ANSWER

TO THE  
*Lawfulness and Necessity, &c.*

WITH  
Some OBSERVATIONS upon a LETTER  
from a GENTLEMAN at *Edin-*  
*burgh* to a MINISTER in the Country.

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*Happy is he that condemneth not himself in that Thing  
which he alloweth, Rom. xiv. 22.*

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EDINBURGH  
Printed, and sold by most Booksellers in Town, 1737.

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ENGINE

LETTER

1870

1870

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## A D E F E N C E of the *Layman's* L E T T E R, &c.



SOME Weeks ago, several Clergymen meeting at — house in the Country, the Act of Parliament, &c. was the Subject of Conversation; my Friend endeavoured to persuade these Reverend Gentlemen, to comply with the Appointment; but finding their Difficulties not sufficiently removed, he, from a pure Regard to the Interest of this Church and Nation, published the Sum of the Argument in a Letter to ——— hoping that some one or other would concur in opening their Eyes.

Two Authors have undertaken to satisfy all Doubts and Scruples, but willing to monopolize the whole of the Honour, they not only exclude the *Layman* from his just Share, but would have the World believe he is moved by a very different Principle. — The Publisher of the *Lawfulness*, &c. takes it for granted, pag. 17, 'That the *Letter* is calculated against ' Reading or Obeying;' and therefore finds Fault with *Tit. iii. 1.* because on the Title-page. I hope this Author will not urge Obedience to any human Power in Opposition to the Testimony of Conscience: Supposing then the *Layman* really intended, the contrary of which is indeed true, to dissuade Ministers from publishing this Law; yet if he was so weak as to fancy the Law wrong and unequal, he might, in all Propriety, prefix the censured Scripture, that every one may see his Sentiments

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EDWARD





## A D E F E N C E of the Layman's LETTER, &c.



SOME Weeks ago, several Clergymen meeting at — house in the Country, the Act of Parliament, &c. was the Subject of Conversation; my Friend endeavoured to persuade these Reverend Gentlemen, to comply with the Appointment; but finding their Difficulties not sufficiently removed, he, from a pure Regard to the Interest of this Church and Nation, published the Sum of the Argument in a Letter to — — hoping that some one or other would concur in opening their Eyes.

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ments are even consistent with a Text, which, of all others, might be thought to stand most opposite :——But some Men are so fond to pick a Quarrel, that rather than lose any Opportunity, divine Truth must speak contrary to itself.——I shall be glad if this Author equally well reconcile the Spirit and Genius of his Performance, particularly *pag.* 21. 22. with the Character on his Title-page, HARMLESS AS DOVES.

The Answerer of the Queries represents, *p.* 5, the Publisher of any Doubts in the present Case, as imitating the constant Practice of Persons disaffected to our Establishment, who fish out some plausible Matter to engage the few weak Clergy in the Kingdom in Measures against it, which, says he, 'they never better succeeded in than by raising a Cry——that the Church, that is their Stipends, were in Danger.' The smallest Reflection was sufficient to show, that this Cry could never be raised by the Writers in Opposition to the Law if there are any such, for by complying with their Design, Ministers don't preserve but endanger their Stipends.——'Tis a Cry peculiar to those who defend the Act.——But if this Gentleman will have it to proceed only from the Enemies of our Constitution, let him stand condemn'd by the Words of his own Mouth, *p.* 16, 'To condescend as much as possible to the Weakness of some, suppose the Act rigorous, yet should not the Danger to which they expose——themselves and Families, prevail with them.' And *p.* 19, 'I hope the Odium and Misery to which the Contraveeners of this Act are likely to be exposed will have Weight.'

It is not my Intention to follow these Authors into all the By-paths they have taken, or to animadvert on every particular Hardship the Church has undergone in former Times, many of which are huddled together to point out a Precedent, a Way of doing that does not say a great deal for the Goodness of their Cause.——My Business shall be, 1<sup>st</sup>, To consider, how far, notwithstanding any Thing they have said by Way of Argument, the Clergy's Objections contained in the Layman's Letter, remain unanswer'd. And, 2<sup>dly</sup>, shall enquire into these Cases they are pleased to call parallel, and show, that, in our Apprehension, they are by no Means such, and can't obviate the present Difficulty.

It would swell this Paper far beyond our Design, to represent anew the Layman's Argument in full Form, therefore the Reader is desired to consult the Letter itself as we go along.

Both our Authors seem to admit the Substance of his first Observation, and agree, that Ministers of the Gospel are not proper Heralds of the Civil Law, &c. yet one of them (a) thinks the Clergy will acknowledge, that this is a habile Way of notifying any Act of the Legislature, when at the same Time he knows that a great Part of the *Letter* (b) shews that it is not a necessary or habile Way; and that indeed the Pulpit, and the Lord's Day, especially the Time set apart for publick Worship, are in no one Instance proper for the Publication of any Law, but such as Ministers should approve in every Particular, and warmly recommend; and it will appear afterwards, with respect to all the Laws cited by these Authors, of which Ministers were required to be Heralds, that the Legislature in so enacting, intended they should carry along with them the Sanction of the Clergy. — The Author of the *Lawfulness*, p. 17. thinks, 'That granting it were a Piece of Disrespect put upon Ministers, yet they are not to stand upon Punctilio's of Honour.' So says the *Layman*; but still they are bound to maintain the Dignity and Privileges of their Office, with a single Regard to the Honour of their glorious Master: The Apostles said, *It is not Reason they should leave the Word of God and serve Tables*, Acts vi. 2. And perhaps it may be inferred, that Ministers of the Gospel should not interrupt their sacred Ministrations on the Lord's Day, and act the Part of publick Criers and Proclaimers of civil Edicts. Besides, this Author never once observes the Reply in the *Letter*, p. 6. That giving Way to a Precedent of this Kind, may have the worse Consequences, in regard the Appointment seems to respect Ministers, not so much as particular Subjects, or Individuals, but as a Society, as Churchmen, an associated Body, somehow contradiistinguished from the Commonwealth.

The *Letter* maintains, That neither the Clergy of Scotland nor England were ever appointed to publish any Acts of the British Parliament, and most certainly never under a Penalty

(a) *Anf. Quer.* p. 6. (b) p. 6. 7. 8. 23. 29.

malty ; he answers *p.* 18. ' The *Letter Writer* seems to be a young Gentleman of Wit and Spirit, but he has not had much Experience of the World, nor is well vers'd in publick Affairs, nor a good Historian,—for the Proclamation of the Convention of States, &c. did require Ministers, &c. to read this Proclamation publickly from their Pulpits, &c.—and since that Time Ministers have been required to read the Proclamations of Sovereigns on the Lord's Day.' My Friend is oblig'd to him for the first Part of the Character, and frankly owns he is so unacquainted with the World and History, that, till this Moment, he never knew that a Proclamation of the Convention of States, 17 Years e're a *British* Parliament had a Being, or that a King's Proclamation, is one and the same Thing with an Act of that Parliament, it would have been more worthy of this Historian to infer, that because in a Marginal Note the Layman says, The Brethren know, that since the Revolution, they were appointed to read an Act of the *Scots* Parliament, that therefore they deny they were ever appointed since that Time to read any other Law, Proclamation or Act (a). To the same Purpose I heard a Gentleman t'other Day warmly contending, *That the Parliament had enacted, that no Man should eat Blood under a Penalty* ; observe how he prov'd the Fact, For, said he, *the Jewish Law forbids it*. Upon Enquiry I found he was apt to mistake one Law for another, having contracted a Dimness in his Eyes by turning over old musty Records.

The Layman observes, 2dly, for the Reasons mentioned *p.* 6. 7. 8. That tho' the proper Officers for publishing Civil Laws are not bound to examine their Contents, yet when the Appointment extends to any Set of Men, whose Office it is not, they, and especially Ministers, should look into the Contents of what they are to publish on the Lord's Day in Time of publick Worship, so as to be satisfied in their own Mind, that at least it carries in it nothing wrong, or any ways injurious to Man-

(a) Tho' this Author hath unjustly attacked the *Layman*, yet it may be said that 'tis equally, if not more reasonable, that Ministers should obey the Appointment of a *British* Parliament, than that of the Convention of States, or of any King whatever: The Answer to this you'll find towards the End of our Defence.



Mankind: 'Tis added, That this is not the enthusiastical Whim of *Scots* Clergymen, but was the Sentiment of ten thousand Clergymen in 1688, the whole Clergy indeed of *England*, two hundred only excepted, a Sentiment that had the Testimony of almost the whole Nation.

The Conduct of the Ministers of *Scotland* on the first Sabbath of *August*, saving a very inconsiderable Number, perhaps not six or seven, is Demonstration that all of them are so weak as not to approve of the Act, &c. in its whole Frame and Contexture; if therefore the Reasoning of the *Layman*, under this Particular, is good and just, our Authors must give up the Argument; and so it is that they have not attempted so much as to weaken its Force.—The Publisher of the *Lawfulness*, &c. is pleased indeed to insert, p. 34. 'That the Order of King *James* requiring the Clergy to read the Declaration for a boundless Toleration, &c. is cast up a Parallel to this Act but he hopes not by the *Letter*-writer to blacken the King and Parliament.—He enters on a Detail of several Reasons, which determined the Clergy not to read the Declaration, and concludes, 'It is amazing to me that such a Declaration by a Popish King, calculated for the Overthrow of the *Protestant* Religion, and the Establishment of Popery in its Room, should be brought into Comparison with a Law enacted by a Protestant King and both Houses of Parliament, &c.'—The Reader will be surprised when I put him in mind, that the *Letter*-writer is so far from running the Parallel, or bringing these Cases into Comparison, that he expressly declares they are not equal.—We don't speak, says he, pag. 8. of the peculiar Reasons of the Clergy for refusing to read the Declaration, nor pretend that our Case is in all Respects equally straitning with theirs. The Declaration was founded on the Claim of a dispensing Power assumed by the King: This Act hath the Authority of both King and Parliament.—These are my Friend's Words, judge ye if this Author has treat him in a genteel or fair Manner: Can he vindicate himself from all Malice or ill Design in insinuating an Intention to blacken our present gracious King and Parliament?—The *Layman* only observes the general Principle of the *English* Clergy; it seemed necessary to them to fix this as a Rule, That they ought to publish nothing in  
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*Time of Divine Service but that which they approved of.*—This is the Rule—a Rule that's equally applicable in all Cases.—The Authority enjoining can make no Alteration.—The Nature of the Thing is still the same.—But hear our Author—'They were of different Sentiments amongst themselves, whether the simple reading was an Approbation—' they had many strong and unanswerable Reasons why they 'would not read.' *p. 35.* But is it not still Fact, that they made this a particular distinct Ground by itself, that they could intermix nothing with divine Worship they did not approve of? —'This was too narrow a Point to ground their Refusal upon.' *Id.*—It seems they were of another Mind than this Gentleman, and saw it necessary to make a Stand for their Liberty, that so Hardships of that Kind might not be imposed on them in Time coming (*a*). And I shall only add, that seeing they acknowledged the King as Head of their Church, and subscribed the Rubrick, which directs them to read what the King enjoins, if our Author's Principles are carry'd to the utmost, they ought to have published the King's Declaration, it was not proper for them to enquire whether its Contents were just or not (*b*).

The Layman in the 3<sup>d</sup> Place, *p. 9*, proves, That if Ministers, tho' considered only as Heralds, any who apprehend, or are persuaded (whether the Persuasion be just or unjust does not alter the Case) that a Law is harsh, severe or unequal, they ought rather to lay down their Office, than have an active hand in making it publick.—One of our Authors, I suppose, is too good a Divine to deny this.—The other (*c*) seems to have dealt in Matters too high for him, witness his 11<sup>th</sup> Page.—What does he mean? —Will he assert, that a Man in any Case may warrantably go contrary to the Dictates of his own Mind? or that Conscience, suppose it in the wrong, must not be his Guide, till he is better inform'd? —By what other Rule shall he walk? by the Conscience of another!—He speaks of Ministers not being called to suffer in Support of the Truth of a Proposition in the Sciences.—Is this

(*a*) Burner's History, Vol. I. Fol. Ed. *p. 737.* (*b*) See likewise the Answer to the Queries, *p. 12,* (*c*) Answerer of the Queries.

this Act a Point of meer Speculation — or does it concern a Minister no more than a Mathematical Problem? I'm indeed of the Querist's Opinion (a) ' That 'tis every honest Man's Duty, to maintain Truth in all Cases, and in all Events, and would think it a great Grievance if I were to be put to Death, or in any other Way punished, for refusing to abjure the meanest Proposition in *Euclid*; tho' Religion be not at all concerned there, and a Man may be sav'd without believing one of them; is it not a Clergyman's Duty to maintain even his civil Privileges? &c.

To proceed, the Letter, p. 20, shows, that Penalties are, no doubt, Part of a Law. — The same Act enacts the penal and statutory Parts, and these are but one Law. And 'tis obvious, and even demonstrable, that the Error of many Laws lies directly in connecting unjust Punishments with Disobedience: If, for the better Policy of the City of *Edinburgh*, it were enacted, that the Water-bearers should attend the Wells in a given Order; but in Case of the least Failure, that is, if the 6th in Order stept in to the Place of the 5th, it should be lawful for this 5th to take away the Life of the 6th with Impunity; — the mandatory Part is good, yet scarce can we conceive a Law more severe, more unjust and contrary to Right.

The Author of *Lawfulness*, &c. p. 34, hopes to get rid of this Supposition, by calling it *extravagant*, because it makes the fifth Waterman Judge in a Matter of Life and Death, &c. — But, to strip this Supposition of its imagined Extravagance, put the Case, that the Parliament enact, that the sixth, upon being convict of his having stept into the Place of the fifth, shall be punished by Death, and Confiscation of Moveables, &c. may we not still say, that suppose the mandatory Part is good, yet scarce can we conceive a Law more severe, more unjust, and contrary to Right. From this plain Instance, to which a thousand might be added, the Letter concludes, p. 21. That Laws may become unjust from the Sanction, as well as the Command, and that therefore the Publication in either Case must be equally criminal. This is supported by Arguments to which no Answer is given; the above Author is pleas'd to think his bare Assertion sufficient.

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(a) Observ. p. 5.



He indeed produces a Simile, *pag.* 33. A Father commanding his Son to improve in Learning, and attend the School otherways he will cut out his Ears, and concludes, ' Here the Letter writer may see an unjust Penalty is connected with Disobedience, and yet the Son's Disobedience cannot for this Reason be excused. Mighty Discovery ! This the Letter-writer knew very well before, and figures a much stranger Case, *page* 22. He asks the Brethren, ' Had the Parliament enjoined your religious Observance of the Lord's Day under the like Censure with the present Act, would it not have been plain Duty to obey ? ' And afterwards he makes them acknowledge, that this would not warrant their Neglect of the Sabbath ; but then they show that this and every other Example of a like Nature, are by no means parallel to the present Case.

Now, let me ask if any one who reads this Author's Supposition of the Father and the Son, and his Address to the *Layman*, would imagine that the *Letter* had put a Case equally strong, and proved by a Chain of Reasoning, that these Instances are not at all applicable to the present Purpose. This is but one Specimen of our Author's Candor and Ingenuity. — The Letter observes, That such Examples only contain Duties, to which we are antecedently and indispensibly bound, and ought to observe them with the greatest Care, tho' not enjoined by any human Authority. — Thus, with respect to his Simile, is it not the necessary and unchangeable Duty of a Son to be concerned about his own Education and good Instruction, &c ? Is that the Case of Ministers, with respect to reading such Acts of Parliament as the present ? Whoever reads this Act, does it solely in Obedience to the present Law, neither his Character as a Subject or a Minister, gives Rise to any Antecedent, to any other Obligation. — Besides, in many Cases, Compliance to a Law sanctioned with unjust Penalties, carries in it such Submission and Acknowledgment, that even that Obedience, which otherwise might have been granted, should be refused, and our Liberty asserted. Thus to instance his Father and Son ; should the Father command the Son to wipe his Shoes every Morning, we shall allow that the Son ought to obey ; but if the Father adds, that

that in case of a Neglect, he will thrust a Dagger into his Breast; or, if our Author pleases, cut out his Ears, we are not sure but the Son ought to bid such a Father Adieu. —

But further, in such Instances, we have nothing at all to do with the Penalty, here it must be read the Clergy must publish these very Words of the Law, which closely join the statutory and penal Part together. And I'll venture to say further with my Friend, That he who promulgates any Law and its Sanctions, *purely* in Obedience to the Authority appointing him, thereby acknowledges the Power of the Legislature so to enact under such Sanctions; that is, in the present Case, acknowledges the Power of the Parliament to threaten, and actually to incapacitate the Ministers of this Church, *even while the legal Ministers* (a) to sit or vote in any of her Judicatories. What else but such a Persuasion has made so many Ministers publish the statutory, but not the penal Part. —

I'm aware this Gentleman may fancy he has removed a great Part of the Argument, by asserting, *p. 33d.* That he sees no Necessity, nay, nor Obligation on Ministers, when they read the Act, to read this Clause. — But is not this Sanction a Part of the Act? — Does not the Parliament require, not only that this Act, *i. e.* surely the Whole, *every* Part and Particular shall be read, but that it shall be read, *as hereby directed*? — Will this Author's want of Eyes alter the Nature of Things, or make that no Part of the Act, which the Legislature has made a Part thereof? — The Intention, *continues he*, of this Penalty, is to be a Compulsitory, and to oblige Ministers to obey: When then Ministers read the Act, the End of annexing such a Penalty unto it is obtain'd, and the Use for which it was designed ceaseth; it is to no Purpose to mention it to the People, they have no Manner of Interest or Concern therein.

Who told this Gentleman so? The Parliament by annexing this Penalty, declare and teach the Clergy, that they have Power so to threaten and actually inflict; many Ministers have taught their People the contrary. — The Parliament for the better Notification, commands this Law to be read in the Church

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Church

(a) See that Part of our Defence which considers the Penalties that respect Ministers.

Church twelve Times in one Year? And who can say, but that by appointing the Ministers to read this whole Act, to read the whole, as hereby directed; who can say, but that by this they intended that the same Mouth which led the Congregation into an Error, should convince them of their Mistake, and let them see the Parliament is invested with other Powers than they imagined?

I don't assert this as a positive Truth; my Design is to let this Author know, that 'tis easy to figure one Hypothesis in Opposition to another; but in Reality, the Layman has taught us both, that it is not ours, that 'tis too much Presumption to omit this or the other Part of the Act; If one, says he, p. 30. may pretend there's no Need when obeying, to read the Penalty in case of Disobedience,—Another may say, my People know their Penalty if they shall harbour the Fugitive; why need I spend Time in reading this Part.—A third knows that mentioning both Houses of Parliament, expresses the whole Authority, and so sees no Need to pronounce *Lords Spiritual*.

Thus every one may find out a different Reason against reading different Parts of the Act, until the Whole is mutilate and taken away Piece meal, or perhaps a quite opposite Substitute in its Place. Are we thus to assign the Reason and Intention of the Parliament, in appointing this or the other Clause to be read? Are we, tho' but *Heralds*, arrogantly to determine when that Reason ceases, when the Law is here altogether silent? This, we're afraid, is to ridicule Majesty, and set ourselves above the higher Powers.—

To return, for the Reasons hinted, and more fully contained in the *Layman's* third Observation, p. 9, 20, 21, 22. it appears, That if Ministers, tho' considered only as *Heralds*, any how apprehend, or are perswaded (whether the Perswasion be just or not, does not alter the Case) that a Law, by reason of its Commands, or *N. B.* its Sanctions, is harsh, severe, or unequal, they ought, until better informed, rather than have an active Hand in publishing such a Law, and its Sanctions, especially on the *LORD's Day*, in Time of Divine Service, to accept of the Alternative, and submit to the threatened Penalty.—And the Letter further shows, that this



is pretty plain, tho' it should be granted (a Thing indeed we by no Means give up) that reading or publishing in no Case infers an Approbation, which at once supercedes the Instances in our Author's 31st and 32d Pages, not to say that they appear at first Sight foreign to what he intends to prove.—

Now, the *Layman* cautiously observes, p. 9. that he will not make any close Application of these Things to the Purpose in Hand, his Antagonist ungenerously takes the Advantage of his modest Expression, and that of the doubting Clergy; and in his Address to the People, tells them, p. 47. 'The statutory Part of the Act is by all owned to be lawful.' Here indeed he is safe; for he knows no Man who regards his Life, will venture to gainsay it. This Passage brings to my Mind the Conduct of an honest Woman, when silenced by an Argument, she never failed to pray for a Blessing on the Royal Family, adding, *Now answer me that,—contradict me if you can:* However, tho' the Layman will not assert, that our wise and gracious Rulers have enacted a Thing wrong and unequal, yet he imagines it can give no Offence to suppose them *Men*, that is *fallible*; and as it is impossible to see with the Eyes of another, this Act and its Penalties did not appear to the Clergy just what they could wish.—Certain Doubts, some how or other, cloud the Understanding, and perplex the Mind; yet, while in this State of Suspense, they could not, according to the Apostle's Rule, *Whatever is not of Faith is Sin*, yield a cheerful, sinless Obedience.—As the Foundation of these Scruples the Letter observes, p. 10.

*First*, That this Country having felt the fatal Consequence of intercommuning Acts, in the late unhappy Times, every Thing bearing the remotest Resemblance, looks with a formidable Aspect.—The Author of *the Lawfulness*, &c. p. 9. acknowledges, That there is no Doubt but all sanguinary Laws carry an awful Aspect with them.—That under a tyrannical Reign, like that of the late King *James*, such a Law may be abused to the worst of Purposes, and be execute in the most rigorous and cruel Manner; but thinks it a sufficient Answer, that this is not our Case. And in much the same Manner p. 12. and 13. he endeavours to dispel our Fears, arising from horrid Barbarities actually committed,

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We



We own indeed, with Joy and Thankfulness, that we are under the Reign of the best of Kings, &c. — But how can this alter the Nature of the Law, or prevent its bad Consequences? — 'Tis a standing and perpetual Law; and tho' we are secure at present, can any Man assure us, that this will always be the Case? Who can say into whose Hands the Administration may one Day fall? And may not, in that possible Event, a tyrannical Ministry think themselves the better authorized to execute what was enacted under a mild and gentle Government? If our Author shall be so unhappy as to see these Days, would he use his Interest for preventing the Execution of such a Law, or would he argue as in *p.* 10. That an Objection against it could not come with any good Grace from the Ministers of the Church of *Scotland*, at that Time of Day; for this was enacted in the most happy and auspicious Times?

The *Layman* goes on, A Law which discharges all Humanity, by which not only the Father must shut the Bowels of Compassion upon the unhappy Son, but the tender-hearted Son contribute all in his Power to the Ruin of his aged and helpless Parent; this seems to command something harsh and severe. 'Here, says our Author, *p.* 14. he forgets himself, when he represents the Father so helpless. The supposed Case is, that he was a Rioter, and helped in the Execution of *Porteous*, however he states the Case, to make the reading of the Act to be shocking. But this Gentleman has forgot, that the intercommuning is to continue for ever, after the Time appointed for the Surrender of the Persons declared fugitive; so that the present vigorous Father may thirty Years hence, in the Character of an aged helpless Parent, be dragged to the Slaughter by the Son of his Youth: — Besides, this Author will be able to inform us, if, on the Supposition a defenceless old Man has been doted enough to prompt on any of the Rioters, tho' himself not able to move one Step, whether can he be declared fugitive, and is his Son afterwards in Safety to conceal and cherish him?

The Letter adds, The Law of *England* knows no such Thing: meaning, as intercommuning Persons. Our Author thinks, *p.* 10. the *Layman* labours under a very great Mistake,

stake, and cites two standing intercommuning Acts, one of the *English*, and another of the *British* Parliament: But he'll forgive me to observe, that he himself is in the Mistake.

At present the Law of *England* is divided into three Parts, 1<sup>st</sup> The common Law, which is the most ancient and general Law of the Realm. 2<sup>dly</sup>, Statutes or Acts of Parliament. 3<sup>dly</sup>, Particular Customs.

The common Laws are properly and aptly termed *legis Angliæ*, because they are appropriated to the Kingdom of *England*; for this see an undoubted Authority; *Cook, 2d Part. Inst. Cap 9th*. So that nothing but Inadvertency or Ignorance could mistake my Friend. 'Tis plain, when the Letter speaks of the Law of *England*, the common Law, not any particular Statute or Act of Parliament is meant: For, not to mention the marginal Note, it follows in the Letter, And since the Union, this Part of the Island, namely *Scotland*, by the Goodness of a *British* Parliament, is a Stranger even to any special Act of that Nature; plainly supposing, that this was not the Case in *England*.

The Letter proceeds; Now our Situation is somewhat altered, we seem under a peculiar Hardship. One on the other Side *Tweed* may, without Danger, entertain the Guilty; but on this Side, Death and Confiscation of Goods are the Punishments.

— The Answer to the Queries, *p. 16*. attributes this Observation 'to the Perverseness of some, that, rather than want the Opportunity of complaining, they make a Clamour against what should be esteemed their Happiness.' Whose Happiness? The Happiness of the Rioters; so says the other Author, *p. 11*. 'This is so far from being a Ground of Complaint, that it seems rather a Benefit to the *Rioters*, that they may escape to any Part of *England*, &c.'

Who denies this! But how, as the *Layman* observes (a), does this obviate what is alledged concerning the peculiar Hardship of the Innocent in *Scotland*, while *England* is free.— 'To what Purpose should this Act extend to *England*, because unless the Judges had Power to apprehend, it would be to no Purpose to inform, *Ans. Quer. p. 16*.' Strange Ignorance of Law, and what passes in the World, tho' they can't

(a) Marg. Note, *p. 11*.

can't in *England* try a *Scotsman* for a Fault committed in his own Country, yet can't they apprehend, and send him down to *Scotland*? — Was not *Linnen* a few Weeks ago apprehended upon Suspicion of being accessory to the Riot? — 'These Rioters must be supposed only to lurk amongst their Friends, by whom only 'tis possible they should be known, *ib.*'

This Observation destroys itself. Will ever fugitate Persons chuse that as the Place of their Residence, where they are too well known to escape being discovered?

But let me ask (the rather that the Intercommuning continues for ever) what is the peculiar Species of these Creatures; *that 'tis impossible* they can be known even in all Time coming by any but their Friends? — *Edinburgh* is the *locus delicti*. What then? — Is not *England* and *Scotland* one Nation? And why should the Inhabitants of *Inverness* suffer for an Offence done at *Edinburgh*, more than those of *Berwick*? — If the Crime lessens in Proportion to the Distance of the Scene of Action, the former are the most innocent. — As to *Act* 22. 9th Year *Geo. I.* its Disparity to the present Case shall be afterwards shown; mean Time, suppose there were any Instances, where intercommuning Acts are restricted to a certain Part of His Majesty's Dominions, with as little Reason as the present, the *Layman*, p. 16. thinks this equally severe. — Our Author (a) it seems has heard 'it called a partial Law, as if it were designed to reach *Scotsmen*, and consequently every *Scotsman* should express his Dissatisfaction with it.' Let him now say what he has done for vindicating the Law from this Aspersions.

The *Layman* observes, in the next Place, p. 12. That the Clause relating to the Reward for Informers, likewise gave the Clergy Pain. He condescends on what fatal Consequence may follow, — That two Rogues, nay, two Ring-leaders of the Mob, have it in their Power legally to convict the most valuable and guiltless Members of Society, while they obtain a Pardon to themselves, with 200 *l.* each as a Reward, &c. and the Queriest has set this Matter in a very strong Light; to all which 'tis answered. — And yet the Author of *The Lawful*  
*fulnest*

(a) *The Lawfulness, &c.*



*fulness* asserts, p. 39. 'That this Objection proceeds from Ignorance of human Affairs and the World. Rulers have invited and encouraged their Subjects to be Informers, have sustained them as Witnesses, and bestowed Rewards upon them.' That his Proof has failed in every one Instance, shall be shown when we consider his parallel Cases. But supposing the Fact, is this enough to prove the Thing reasonable? — Have Rulers never enacted what is wrong and sinful? — 'There was a *Premium* of *L. 100 Sterling* promised six Months ago, to any that should be an Informer, but no *Knight of the Post* has yet appeared to accept of it, *ib.* p. 42.' — because it was not in the Power of any two of them to convict Persons by their own Evidence. — 'But their Juries in *England* are the grand Security of the Innocent,' *ib.* — most certainly, — 'so are our Juries in *Scotland*,' *ib.* — by no Means, in the present Case. — It has been often said we are safe, the Jury will have no Regard to the Testimony of an Informer, who is to receive 200 *l.* for witnessing: But how can the Jury know whether any adduced Witness is Informer, or not? 'Tis not competent to the Pannel to ask the Question, or to demand if the Witness has receiv'd, or got the Promise of any good Deed, for witness-bearing, because not relevant, tho' granted. He concludes, 'In fine, the Provision in this Act, with Respect to the Testimony of Informers, is not strong and positive; for it is said, that they *N. B.* shall not be disabled to be Witnesses: It does not say that they shall be admitted Witnesses,' — what a distinguishing Conscience is this? — 'It does not say, that they shall be admitted Witnesses, if there are other relevant Objections against them.' — Great Goodness indeed, if we can, to Demonstration, prove the Witnesses are perjured, or of an immoral Character, we are safe. — 'Now, if none but Rogues and Villains will accept of a Reward, the Innocent will not want Materials sufficient for reprobating and casting them; — mighty Security! — Is it not very possible, that Persons in low Life, formerly not openly vicious, may be tempted by such a Reward; a Reward to them immensely great, to perjure themselves and cut off the Innocent.

The *Letter* takes Notice, 3dly, p. 13. that even the Words *Lords Spiritual*, gave a good old Man no small Disturbance; he did not love to pronounce them in a *Presbyterian* Pulpit without some Observations. Our Author, after repeating this Sentence, in which there is not a Word with more *O's*, than two, says p. 7. 'He has ever observed, that when this Word with the many *O's* is brought in to an Argument, it was when People had not Reason to advance, or when they had little to say.' I'm really so dull as not to discern either the Wit, or Sense of the Observation, and shall be sorry if this Gentleman has such an Abhorrence to *Good*, that he expects nothing agreeable to his Taste and Reason, wherever this Word is found (a).—I can't help thinking, that he must be conscious what he has said on this Head is not much to the Purpose; '*Presbyterians* in *Scotland* submit to the Laws, and pay the Duty imposed upon Candle, &c. without approving thereof:' But to be an Officer in levying these Duties, implies an Approbation, and so does Ministers reading, they being thereby active in putting the Law so far in Execution, as well as the Officer who levys the Duty, or makes a Survey, in order to be a Charge. Thus the Instance seems to turn out against himself. But whatever be in this, is there any Parallel betwixt Ministers obeying Acts of Parliament, or praying for the Parliament, and their publishing this Act, where the Authority of *Lords Spiritual* is expressly asserted? And to what Purpose does he mention the Acts of Parliament annexed to our National Covenant? Are these any Part of the Covenant itself? Did ever any swear these Acts? They were only collected and inserted to show what the Civil Government had at different Times enacted against *Popery*, and in Favours of the *Protestant* Religion. As to what he adds concerning our Saviour's paying Tribute, and attending the Temple-worship, is as little to the Purpose; what would he infer from it? After all he has writ upon this Head, I'll venture to imitate my Friend in saying, a good

(a) I'm told, that the Author designed to play upon the Word *Homologation*, with the four *O's*, a Piece of Wit he has borrowed from the Author of *The Review of the History of the Indulgence*: But in this he is playing upon himself. *Homologation* is a Word of his own, not the *Letter-writer's*.

good old Man did not love to read an Act from his Pulpit, wherein the Authority of *Lords Spiritual* is expressly asserted, without suitable Remarks, because he is afraid of a virtual Approbation of that Order, &c. Seeing, as we understand, he is to publish his own Reasons, I shall pass from this Point, by asking our Author, If, as he asserts the reading this Clause in a fair and candid Construction of Things, is no more than a bare Narration of Matters of Fact, that the Upper House of Parliament consists of *Lords Spiritual* and *Temporal*, &c. And if, as he maintains p. 36. 'That when the Magistrate commands a lawful Thing, we must, *for Conscience Sake*, obey him, unless some Circumstance or other make that Thing, lawful in itself, to be sinful.' I would ask, If any of his Acquaintances that admits of both these Suppositions, has tother Lord's Day, when publishing the Act, passed over this Clause? I would willingly know how they account for their Conduct. What has become of their mighty Regard to Authority, while they refuse barely to narrate a plain Fact? — Why, is the Argument, *for Conscience Sake*, of no Weight? I hope they will not pretend these Words *Lords Spiritual*, are no Part of the Law; nor will the Fear of their being offensive, bear them out, according to our Author's Principles (a): Besides, the Fear of scandalizing, considering the present Humour, call it foolish, or what you will, would lead them to omit, I don't say one Clause, but almost the whole Act.

The *Layman* observes, p. 13. That several other Things pass in Conversation relating to the Matter of the Act. — Because these were not published, this Author supposes p. 6. That every Body who has true Notions of Government, and a Sense of the Blessings of it, will agree to the Justice of that Part of the Law, which declares Persons fugitive who do not appear, because they have twelve Months to surrender themselves, after the Day of pronouncing the respective Sentence or Sentences of Fugitation against them. I must inform this Author, that some are disposed to think, there is even in this Part of the Law a singular Hardship. A loyal Subject who was *alibi*, or is innocent, and is now gone to the Plantations, either in the East or West *Indies*, conscious of no Guilt, may

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(a) See *The Lawfulness*, &c. p. 3, 35, 36, 45, 47, 48, 49.



be declared fugitate by Act of the Justiciary. — Thus the Innocent, without his Knowledge, is condemned to die, if he does not by some scarce supposable Accident, return within the limited Time. — The *Advertisement* in both *Edinburgh Papers* of the 25th *January* 1737, requiring a certain Number of Persons, whose Names are there mentioned, and who had left their Masters Service, to return before the 20th of *March* then next, and give Notice thereof to any of the Magistrates within eight Days, and in case of Refusal, declaring them incapable ever after to be Freemen in the said City; this *Advertisement* can never be supposed to remove the present Hardship; for, not to mention some Mistakes in that *Advertisement* it was antecedent to the Sentence of Fugitation, and I suppose no Person could by it know who was to be fugitate, and who not; nor will it be pretended, but that Persons have or may be fugitate, whose Names are not contained in that List. Neither is it sufficient to say, that the Court of Justiciary in *Scotland* have taken the same Method they follow in other Cases, because Persons fugitate by them, in *capital* as well as other Crimes, may at any Time thereafter return, and upon being relaxed, are admitted to Trial, as if they had compeared upon Citation; Whereas by the present Act of Parliament, after the Time for their Surrendry is expired, *They stand attainted of Felony to all Intents and Purposes, and shall suffer and incur the Pains of Death, and Confiscation of Moveables.* So that seeing the Consequences of Fugitation in this Case are so widely different and fatal, is it not hard, that the Act of Parliament does not provide some more than ordinary Method of Notification? Reading of the present Act, even twelve Times a Year from the Pulpit, is to no Purpose as to this Point, the Names of the Fugitate not being insert. — This is a Severity not to be found in the very Laws that relate to Treason; when Persons are charged with that Crime, and abscond, they are proceeded against (as we are informed) upon Conviction, or Evidence taken either before the Parliament or other proper Courts, that they were actually in Rebellion, and still Time is given for them to appear and stand Trial, *and their Names and Designations*

*signations are insert in the Act for that Purpose.* But in this Case they are declared fugitate, without any Evidence or Conviction taken, their Names are not insert in the Sentence, and yet if they don't return within a certain Time, they are directly attainted of Felony.

The Letter proceeds, *p. 14.* to consider the Time appointed for reading the Act, *the first Sunday or LORD's Day in every Month for one whole Year, on such Sunday or LORD's Day in the Morning, immediately before the Sermon.* —

'Tis observed, that however our Clerks sometimes intimate Sermon will begin such a Time, when they mean publick Worship, that yet this is by no Means the Intention of this Act, never did a *Scots* Parliament conform themselves to this Method of Speech, far less are we to suppose a *British* Parliament have followed such an Impropriety, &c. — Our Author, *p. 22.* again fancies the *Layman* is mistaken in Point of Fact: 'Was not, *says he*, the Proclamation of the Convention of Estates ordered to be intimate at the End of the (a) Forenoon's Sermon.' He had formerly dreamed, that the Convention of Estates was the same with a *British*, no Wonder then he now mistakes it for a *Scots* Parliament. — But how does it appear the Convention, &c. followed such an Impropriety? — 'Ministers did understand it not to be the Intention of the Proclamation, that it should be read before the last Prayer, and the singing of Psalms, — these honest Men thought it no Impropriety.' — Does this prove it to be the Mind of the Convention? — Might he not as well argue, that because almost the whole Ministers who have read the present Law, have done it before publick Worship, that therefore it was the Intention of the Legislature that it should be published at such a Time; so that his Observation is nothing more than a plain begging of the Question. Besides, reading the Proclamation, &c. after Prayer and Psalms, e'er the Blessing was pronounced, might answer the Intention of that Law, much better than the Conduct of our Clergy answers the

(a) In the Order of the Convention, &c. it runs at the End of their Forenoon's Sermon, which indeed in my Apprehension is much the same with saying at the End of the Sermon; but the Reader must observe, that this Author, by changing *their* into *the*, was willing that the Order in this Proclamation might appear as similar as possible to the Appointment of the present Act.

the Intention of the present Act, while they read it before all publick Worship begin. The *Letter* shows, *p.* 15,--32, 33. That such a Publication in the present Case, is much the same Thing with Silence itself: But supposing it would equally well answer the Design of the Lawgiver, since the Clergy are but Heraulds, they have no Warrant to vary from the Letter of the Law in the minutest Point.—Further, the Injunction *after the Forenoon's Sermon*, is not equally strong with the Words now before us; the *Letter* notices, that least this Phrase, *before the Sermon*, might admit of any Evasion, 'tis added, *immediately before the Sermon*, a Phrase new, unprecedented, and evidently calculate for the Purpose in Hand. But this, and other particular Circumstances, all mentioned in the *Letter*, *p.* 14, 15. our Author wisely passes in Silence. He instances in the Case of the Proclamation of Banns in order to Marriage. To this the *Layman* gives a Reply, marginal Note, *p.* 32. it seems to have escaped his Notice; he observes, That 'in Scotland we have two Discourses in the Sabbath-Forenoon, one of them we call a *Lecture*, which is first delivered; the other we call a *Sermon*.' Now he asks my Friend, 'Is not the Act obeyed, if a Minister shall read it before the *Lecture*? And adds, I suppose he will not refuse this.'—'Tis most certainly true, if the Parliament call our *Lecture* a *Sermon*, but not otherwise.—'Surely this is not an Intimation immediately before the Sermons.'—Let me answer for my Friend in this Case: Most surely it is an Intimation immediately before the Sermon; so that his After-reasoning, *p.* 23. is intirely vain, and we may still maintain, that Ministers are commanded to publish this Act in Time of Divine Service; and Obedience will appear the greater Hardship, if we add, that this must be done no less than twelve Times in a Year, with the utmost Solemnity, immediately after the Clergy have addressed the Hearer of Prayer, that they may speak from Faith to Faith, that what is spoken may be laid up in the Heart, and practised in the Life, a Circumstance however trivial it may seem to our Author, yet of no small Weight in the Opinion of others; a Man of the greatest Moderation, and the furthest removed from superstitious Niceties,



ities, thought on this sole Point he could venture all, and state his Sufferings (a).

'Tis further enacted, *That in Case Ministers shall neglect to read this Act, as it is hereby directed, they shall, for the first Offence, be declared incapable of sitting or voting in any Church Judicatory; and for the second Offence, be declared incapable of taking, holding, or enjoying any Ecclesiastical Benefice in that Part of Great Britain called Scotland.*

A great many good and wise Men, says the *Layman*, p. 16. think, and perhaps not without Ground, that this first Penalty is purely Ecclesiastical, which cannot be justly threatened, or inflicted by the Civil Magistrate, but belongs to the Ecclesiastical Jurisdiction.—For satisfying their Minds, nothing is observed (abstracting from pretended Paralles, which shall be considered in their own Place) but, 'That the Parliament did not think they were inflicting a Church-Censure, *Auth. Law. p. 28.*—'Tis very possible, yet still they may have inflicted such a Censure;—'For had they had any Apprehension of this, what would have hindered them from proceeding to a higher or greater Church-Censure for the second Neglect, *ib.*—Because in their Goodness, they thought depriving the Clergy of their Benefices a sufficient Punishment for their Offence, and were not so cruel as to depose them from the Office of teaching and administering the Sacraments, &c.—'Had they judged themselves competent Judges to inflict one Church-Censure, they would not have stuck at inflicting another or, greater, *ib.*—Where is his Warrant for this?—'The first Penalty cannot be an Ecclesiastical Censure, because the second is not.' Strange Inference, if the Par-

(a) The *Letter* bears, that a rigid old *Whig* being seized with a Phrenzy, express'd himself as above; I take this Opportunity of acquainting the Reader, that the *Letter* originally represented this Fact in the precise Words now used; but by an Accident, not worth the relating, they were changed without the *Layman's* Knowledge, and the Man of Moderation, instead of uttering these Words, is brought in interrupting the Person who used them. My Friend has frequently expressed his Dissatisfaction with the Charge, because he imagines, that it weakens the Argument, that the Epithets are wrong applied; and that the Sentence, as it now stands in the *Letter*, speaks out something of a bitter Spirit, which he does not like.

Parliament had for a third Offence, threatned to depose Ministers altogether from the Exercise of their Ministry, according to our Author, it might still be said, that even this is not a Church-Censure, because the second is not; if they had imagined themselves competent Judges of inflicting Church-Censures upon the first and third Offence, the Penalty for the second would have been of the same Nature.—Suppose a Minister offend for the first Time, if he prevents the second Offence by reading this Act, he is then still a Member of the legal established Church, and yet incapacitate from sitting and voting in so much as a Kirk-Session belonging to that Establishment; he is cut off from one very considerable Part of the ministerial Office, while he may exercise all the other Parts of it in the Civil Establishment, and under the Protection of the Government. Now, let me with the *Layman* ask this Gentleman, Is not this an Ecclesiastical Censure with a witness? — Thus, tho' it should be granted, that the first Penalty excludes Ministers only from these Judicatories that have the legal Establishment; his Answer for vindicating this Censure from the Charge of *Eraſtianism* does not seem quite satisfying, especially if it is considered, that *Presbyterians* maintain, that even these Judicatories are the Judicatories of CHRIST; do they not constitute them in his Name, and by his Authority? Do they not tell Delinquents, that they are before the Courts of CHRIST? — Is it not their Doctrine, that they are as much bound by the Command of CHRIST to meet in these Courts, and to constitute them in his Name, for the Exercise of Discipline, as they are bound to preach and baptize, &c. If therefore even the legal Judicatories in their Apprehension are of such a Nature; some of them may fancy, that a Magistrate's declaring Ministers incapable of sitting and voting in them for not reading an Act of Parliament, is in so far an annulling the Courts of JESUS, and exercising an *Eraſtian* Power; hence multiplied and weighty Scruples may arise against reading the Act of Parliament, &c. p. 31. After all he has advanced, he makes a Concession for Argument's Sake, that the Penalty is *Eraſtian*, but adds, 'It will not follow, that the reading an Act of Parliament, having such a Penalty annexed unto it, is an Approbation of *Eraſtianism*.' The

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Proofs he gives of this may perhaps be considered afterwards; but supposing that it does not carry in it such an Approbation, the *Layman* and this Defence have already shown at great Length, that the publishing of a Law with unjust Sanctions, is in Reality, whether reading infers an Approbation or not, wrong and injurious to Mankind. How much might he added against a Minister reading twelve Times in one Year on the LORD's Day in the Time of Divine Service, publishing a Law which he cannot approve of and thinks unequal. What he adds, p. 33. 'I shall make once more a Concession, that the Penalty is *Eraſtian* and unlawful, yet if the Thing commanded by lawful Authority be lawful, the annexing of it to the Law, will not excuse Disobedience to the supreme Power, &c.' This, together with the Simile of the Father and the Son, by which he would illustrate this Matter, has likewise been considered.

To return, the *Layman* adds, p. 17. As I am willing always to view Things in the best Light, especially the Commands of my lawful Superiors, shall at present suppose that no more is meant than the depriving the non-complying Clergy, of sitting or voting in the Judicatories of the Church of *Scotland*, as by Law established; and that supposing the Censure past, they might still, as the Dissenters in *England*, meet together, licence, ordain, and exercise other Parts of the ministerial Function; and that nothing more is threatened, but that their Deeds shall not have a legal Influence. This is softning the Matter as much as possible, and making every Allowance which can be demanded; yet after all, continues he, it may be a Question how far this is consistent with what is expressly declared, a fundamental and essential Condition of the Union, viz. *That the Worship, Discipline and Government of this Church, its Discipline and Government by Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, should remain and continue unalterable to the People of this Land in all succeeding Generations.* Now 'tis argued, that 'tis an essential and unalterable Part of our Constitution, that Ministers are to be admitted Members of Presbyteries, Synods, &c. only by a Deed of the Clergy, and shall enjoy the whole Privileges be-

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longing to Members of such Judicatories, *until* excluded by a Sentence of their Brethren.—When therefore the Treaty of Union, by which alone it is that there is a *British* Parliament, ratifies our *Confession of Faith*, and provides that the said *Presbyterian* Government, shall be the only Government of the Church within the Kingdom of *Scotland*.—The Legislature supposing them antecedently possess of a Right to turn out or put in Members of any legal established Church, seems hereby to give up with that Right, and invests the Clergy of *Scotland* *solely* with this Power, and directly stipulates that whatever was done in one or two Instances by the Civil Magistrate before the Union, contrary to these *Presbyterian* Principles, against which the Church always remonstrated, provides that this should not happen in all Time coming.

A great many Things are advanced upon this Head; I'm sorry they have not given such Satisfaction as could be wish'd.

The Author of the *Lawfulness*, p. 36. grants, That 'tis an unalterable Part of our Constitution, that Ministers are to be admitted Members of Presbyteries, Synods, &c. *only* by a Deed of the Clergy, and shall enjoy the whole Privileges belonging to Members of such Judicatories, *until* excluded by a Sentence of their Brethren; and then he asks, 'But what does this amount to, but that the Civil Magistrate cannot ordain Persons to the Ministry, or depose them from it?' He endeavours to darken the plainest Words.—It amounts to this, That as the Magistrate cannot licence Persons to preach, or depose them from preaching, no more can he make any Minister a constituent Member of our Presbyteries, &c. or at first Instance, and in a direct Manner incapacitate any of the actual Members from sitting or voting in such Courts.—Now, when 'tis declared, that *Presbyterian* Government and Discipline shall be the only legal Establishment in *Scotland*, and that it shall continue unalterable; this seems to say, that the Magistrate shall not assume this Power, either in Whole or in Part, even in that Establishment; or as 'tis expressed by the *Layman*, the Legislature, supposing them antecedently possess of a Right to turn out or put in Members of any legal established Church, seem hereby to give up with that Right, and invest

invest the Clergy of *Scotland* solely with this Power. If it was not stipulate by the Union, that Presbytery should remain in its *then* Frame and Contexture, nothing was stipulate at all; we were secured in a meer Name but no Reality, and might have Episcopacy under the Name of Presbytery.

‘But then, was it not the Act of Parliament 1690. that restored these Judicatures, by which Ministers had Access to sit in them? And did the Parliament allow them to assume other Powers, *ib.*’ I don’t well understand the Design of this Observation; if he would insinuate, that the same Authority can destroy them again, one who thinks them warranted and authorised by the New Testament, will not believe this; but let him reflect, that that Parliament is now no more. And indeed no POWER now subsisting, can, without a manifest Violation of our Act of Security, ever disannul, or so much as vary their Form.—He proceeds

To observe, ‘That by the Act of Parliament 1693, ’tis provided, *That Ministers, at their Entry into, and before they exercise their Office, shall swear the Oath of Allegiance and Assurance.*’ Hence I suppose ’tis inferred, that since by this Law Ministers could not be admitted Members of Presbyteries, &c. until they were qualified as above, the Civil Magistrate may require certain *Tests* of actual Members, as necessary Qualifications of their continuing in such Courts;—but may he require a *Test* inconsistent with their Principles as *Presbyterians*, when the Union provides, that they shall be *for ever free* from any Thing of this Nature?—No other just Consequence follows from the above Act of Parliament, but that Ministers can’t be supposed to enjoy the Protection and Countenance of the Government, if they shall refuse resonable Proofs of their Loyalty. And we readily acknowledge, that they are bound, as well as other Subjects, to give their Civil Rulers Assurance of their Allegiance and Fidelity, antecedent to all positive Laws requiring it: But how does this quadrate with the present Case? The Clergy, by their Office, are separate from Civil Concerns; yet, when employed in the Duty of their proper Function, they are commanded to stop, and proclaim a Civil Act, which no more relates to their Office of Religion than any other Act whatever.

and can never be considered as a reasonable Test of a Clergyman's Loyalty, and yet, in case of a Neglect, the Parliament directly incapacitates them from sitting or voting in any Church-judicature, and even makes the Civil Court the proper Judges of convicting the Offenders.

Our Author observes further, 'That the Act of Parliament 1592, which first gave the legal Establishment to these Judicatories, was always binding till it was rescinded: But in the Year 1600, when the King and Council discharged the *Presbyterian* Ministers from exercising their Ministry in *Scotland* upon the Pain of Death, did not this exclude them from sitting in Judicatures? And yet these Ministers never alledged, that it was contrary to that Establishment to restrain them from the Exercise of their Ministry. — Our Historians in these Times give us no such Accounts. —'

He seems here to be mistaken; for *Calderwood* p. 448. has insert at large a Letter from Mr. *James Melvil* to the General Assembly met at *Bruntisland* 1601, wherein he warmly inveighs against the Act and Decreet of Council, for assuming a Power of depriving Ministers, &c. — And therefore, seeing our Author, p. 29. maintains, that this was not an Ecclesiastical Censure, he ought to consider him as having one Eye, at least, to the legal Establishment. But further, the above Historian, p. 445. tells us, 'That upon *Tuesday* the 14th *October* 1600, Commissioners from Synods convened in the Palace of *Holyroodhouse*, at the King's Direction. The King was earnest to have the Kirk of *Edinburgh* planted with other Ministers. The Brethren answered, That could not be done, unless they were deposed by the Kirk, or cut off by some Civil Judicatory orderly.' Can Words make it plainer, that they judged the Deed of the King and Council not sufficient to deprive these Ministers of their Charge, even in the legal Establishment. It can't be pretended, that because they speak of a cutting off by a Civil Judicatory, that therefore they don't dispute the Power of the Magistrate to deprive Ministers, &c. at first Instance: For, seeing this cutting off is distinguished from the Deposition of the Kirk, 'tis more reasonable to suppose, that 'tis meant of Banishment, Death, or the like Civil Punishment, in Consequence of a  
regular



regular Process; which, no doubt, vaicks the Church effectually. But this is beside the Question. We are not enquiring what these Brethren meant by cutting off, &c. but whether or not they judged this Act of Council contrary to their Establishment. — And that it really was such in their Apprehension, and that they thought it a manifest Violation, seems to me pretty evident, otherwise why do they declare, that they could not in a regular Manner plant Ministers in the Room of these whom the King had discharged from exercising their Ministry. But let us suppose for once, that the Clergy did not alledge that it was a Breach of their Establishment; or that the Writers of those Times give no such Account, will this Gentleman say, that in Fact it was not contrary to such an Establishment? If Ministers, for refusing to read, or declare their Belief of a Story, without any certain Evidence given of its Truth; a Story, which as a noted Historian says, murder'd all Probability, should be forbid the Exercise of their Ministry in the Kingdom under the Pain of Death, and deprived of their whole legal Security, If this was to be the Case, such a Security is but a Dream, a mere Name, and would absolutely depend upon the arbitrary Nod of a Prince. Let me here likewise observe, and I hope our Author will by this Time grant, that the King's assuming such a Power, was inconsistent with *Presbyterian* Principles, and therefore can't be a Precedent for what should happen after the Union, seeing we are thereby for ever secured from all such Encroachments: Besides, as we observed in another Case, the same Power which gave Rise to that Establishment, was then in Being, and might have some Pretence to attempt an Alteration thereof; but now our Judicatories are established by an Act, subject to the Review of no Court whatever. And let me ask our Author, Is nothing more implied *even in this* Security, but that it may be altered, whenever Ministers refuse to read any Act of Parliament? — Suppose the last of Queen *Anne's* Parliaments had pass'd an Act, declaring, That the *Protestant* Succession was not in Danger, and requiring the Ministers of *Scotland* to publish it from their Pulpits for a whole Year, under the same Penalties contained in this Act, and that these Penalties had been inflicted upon all for not reading; would the

the Clergy of *Scotland* have thought, that their Church-Constitution, *secured unalterably thro' all succeeding Generations*, was not broke in upon. — If it be contrary to the Union, to deprive the whole Church for not reading an Act of Parliament, it must be so to deprive any one Individual ; what's Injustice to the *Whole*, must in this Case be so to *any Part* of that *Whole*.—

He afterwards informs the World, that his present Majesty and Parliament have other Thoughts of this Matter, than the *Letter-writer*. My Friend indeed has on this Account (if our Author's Alledgeance be true ) very good Reason to suspect his own Judgment ; but begs Leave humbly to say, that no *mere* Authority can enlighten the Understanding, or convince the Judgment ; and still is hopeful, the King and Parliament view this Matter in a very different Light *even* from *this Gentleman* : For he proceeds to say, ' That they don't think themselves obliged by the Articles of the Union, to continue Ministers in Church-judicatories, which are established and protected in *Scotland* by the Authority of the King and Parliament, if they refuse to obey that Authority.' Does he think, that every Instance of Disobedience to Authority, will warrant King and Parliament to abolish a Constitution established by so solemn a Treaty ?

He goes on to extol Parliamentary Authority, and tells his Reader, ' That the Right of his present Majesty to the Crown is a *Parliamentary Right* ; That the Dissenters in *England* have their Toleration by this Authority ; and so ' *Presbyterian* Government in *Scotland* is secured by Authority of Parliament.' What he means by a *Parliamentary Right*, I shall not pretend to say ; but I believe he's the first that ever imagined, that the Security of the *Presbyterians* in *Scotland* was upon the same Footing with the Dissenters in *England*. 'Tis true, we have no *Guarantee*, other than the Faith of a Parliament, that there shall no Alteration happen in our Constitution ; but the Act securing our Church-Government, is an *essential*, a *necessary*, and *antecedent* Condition to the very *Being* of a *British* Parliament, and 'tis to continue in all Time coming the sure and PERPETUAL Foundation of a complete and entire Union of the two Kingdoms

*Kingdoms of Scotland and England.* And therefore, if it should happen, which I pray God may never be the Case, that they encroach or make any Alteration upon our Church-Establishment, *in that Event* one may venture to say, they grasp at Power removed beyond their Reach by the most solemn publick Faith.

He talks, That in *England* all Sets of People have such Notions of the Authority of King and Parliament, that if any refuse to obey the Laws enacted by that Authority, they look upon them as Deserters of *Revolution-Principles*; or in another Term, to be *Jacobites*.—Was ever such Things published? We must suppose he approves of this Sentiment, or why is it insert? And yet is it possible he imagines, that if any Man, suppose an *Englishman* at any Time shall refuse to comply with a Law enacted by King and Parliament, he *ipso facto* acts contrary to *Revolution-Principles*, and sets up on the same Footing with our *Jacobites*?

Tho' our reasoning upon this Head, seems to some pretty plausible, yet they imagine it can't be just, because 'tis impossible to think, that the King and Parliament should engage their Protection and Countenance to any Society of Men, when not in their Power to exclude one Member, however rebellious. To this it is answered, That even upon our Principles the Government have nothing to fear: Thus, for Instance, Should certain Clergymen be guilty of such Crimes, or obstinately refuse such reasonable *Tests* of Loyalty, as that their remaining in Church Courts, might prove fatal to the Civil Establishment, or injure his Majesty's Interest; and if their Brethren, from mistaken Compassion, should not deprive them, the Magistrate can soon rid himself of such noxious Members, by banishing, &c. them from his Dominions, which will effectually, and for ever remove them from these Judicatories. Thus our Author sees how Ministers may incur a Forfeiture of the legal Establishment, I mean so far as respects themselves, without putting the Parliament, &c. to the Trouble of inflicting Church-censures; and this at once obviates all that is advanced by the *Answer* to the *Queries*, p. 13, 14, 15.

*In fine*, If Ministers offend as Subjects, let them suffer as such: If they are guilty of transgressing the Civil Laws, let Ci-



will Punishments be inflicted upon them, in Proportion to their Deserts : But in Ecclesiastical Penalties let them be judged by *their own Peers*, according to the Rules of the New Testament, and our present happy Establishment.

'Tis argued, That since losing a Seat in Judicatories is the necessary Consequence of Banishment, &c. if the Parliament has Power to inflict the one, why not the other ; *that is*, in other Words, wherever Magistrates (the Difference of Courts makes no Alteration) are invested with Power of inflicting a Punishment which necessarily deprives of certain Privileges, *they* have Power, and may chuse to take away any of these Privileges, instead of inflicting that Punishment which falls immediately and properly under their Jurisdiction.

Now nothing appears to me more ridiculous : 'Tis proper for the Court of Justiciary to imprison an offending Clergyman, suppose the Time should co-incide with the Meeting of his Presbytery, does not this effectually exclude him from such a Meeting? But is it therefore proper or competent for that Court to enact, that in Place of Imprisonment, he shall be incapable on such a Day of sitting or voting in that Judicatory?.... This Supposition of the lesser Punishment being included always in the greater, will not hold even in Matters purely civil ; so Banishment, which being the Loss of a Man's Liberty, is next to Death, won't imply a Forfeiture of his Estate, &c. &c.

E'er we conclude this Particular, let us once more consider our Author's Reasoning. — The Act of Parliament 1592 first gave the legal Establishment to *Presbytery*, the Act 1690 restored this Form of Government, and the Act 1693 requires that Ministers at their Entry into, and before they can exercise their Office, shall swear the Oath of Allegiance and subscribe the Assurance ; from whence 'tis infer'd, that the Exercise of their Office (one Part of which is the sitting and voting in Church Judicatures) may as easily, in Case of Disobedience to the Law of the Land, be restrained or taken away by the Parliament as it was at first given. — This is the Sum of what is advanced in its full Strength. — Now, altho' we have shewn, that these are by no Means just Consequences from the above Acts of Parliament, and that suppo-

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sing they were proper Inferences,—still they conclude no-  
 thing in the present Case, because our Security by the Union is  
 on a quite different Footing, and a much surer Foundation than  
 when built only upon such Acts ;— tho' all this, I say, has been  
 shewn, yet for Argument Sake, we shall grant, not only that  
 the Parliament may require Ministers, as well as others, to  
 give a Test of their Loyalty, in order to be intitled to a Share  
 of the legal Establishment, but we shall likewise allow, that our  
 Church Establishment depends wholly upon the Parliament ;  
 —and we shall even admit, if our Author pleases, that for  
 Treason, or any other Crime which deserves it, the Parlia-  
 ment may cut off any one, or any Number of Clergymen from  
 the legal Establishment ; — but what is all this to the present  
 Purpose ? — By the Act now under Consideration, if the  
 Clergy shall offend for the first Time, and obey the second,  
 they are still Ministers of the established Church ; nay in the  
 Opinion of the ablest Lawiers, should they neglect to read alto-  
 gether, they are notwithstanding the legal Ministers, and yet  
 in either Case, are incapacitated from sitting or voting in any  
 Church-Judicatory ; hence the Destruction of these Courts. —  
 There's no Vacancy, and others can't be appointed to supply  
 their Room ; — so that instead of proving that the Parliament  
 may for an adequate Offence turn them all out of the Establish-  
 ment, 'tis incumbent on our Author to shew, that they can  
 in the Nature of the Thing, and consistent with the Security  
 granted to the *Presbyterian* Government at the Union, re-  
 strain Ministers, while Ministers of the Church, and not turn-  
 ed out of the Establishment, restrain them from any Part of  
 their Office essential to the Constitution of the Church, and  
 absolutely necessary for its being. — 'Tis incumbent, I say,  
 on our Author to shew, That the Parliament can do all this  
 without destroying the Constitution *itself*. — And here let  
 me ask, if suppose for some Act of Disobedience, the Parlia-  
 ment does not cut them off from the Establishment, but only  
 declares they shall be incapable of administering the Sacrament  
 of Baptism or the LORD's Supper, or of preaching, or of any  
 Thing else, without which the Church can't subsist ; Is not  
 this to destroy the Constitution ? — Or will it be said, that the  
 Judicatories are not an essential Part of *Presbyterian* Govern-  
 ment ?

ment?—Some Men have racked their Imagination to evade the Force of this Argument, flying at one Time to the Mercy of the Legislature, and at another, figuring our gracious Rulers as full of Wrath;—but we can't reason from what possibly the Parliament may do.—We are now inquiring into the Nature of the Act already past, and what are its Consequences.—We are told, 'That this is to fear where no Fear is,——that 'tis but an imaginary Difficulty founded on a Supposition, that the whole Ministers of *Scotland* will neglect to read.'—But Transgressions ought always to be supposed possible; and therefore the annexing such Penalties endanger our Constitution.—And I'm afraid there's more than a Possibility here; and that in Reality, *all* are guilty,—for who has obeyed the Law, six or seven excepted! And what Certainty have we, *that* even they shall go through with it in all its Punctilios for a whole twelve Month; don't some already begin to weary! However, altho' some obey, yet still there will be a Ruin of our Church-courts, in Proportion to the Number of Transgressors;—and if 'tis contrary to our Establishment to abolish the Whole, it must be so to take away any Part of that Whole. If in a Consistency with the Articles of Union, it might be enacted, That there should be no Presbyteries or Synod in *Lothian*, and that none of the Ministers living within the Bounds thereof, should be allowed to sit or vote in any Neighbouring Judicatories, or in the Assembly.—I can't see why it mayn't likewise be consistent with the said Treaty, to enact, That there shall be no Synod in *Glasgow*, and so on throughout the whole Kingdom.—This Reasoning will even apply to the cutting off particular Members, because every Minister, while a Minister of the established Church, has the same Claim to vote in his Presbytery, that the Presbytery has to meet at all.—Our Author indeed tells us, *p.* 37. 'That if the Civil Magistrate shall execute this Penalty on some that shall not read, the Judicatories still remain, and the Government of the Church will then fall into the Hands of the Ministers that shall read, in Conjunction with the Ruling Elders.'—But into whose Hands will it fall, if all shall neglect to read e'er the twelve Month expires?—

For



Or how are the present Readers sufficient for this *almost impossible* Undertaking? Or can it answer what we have observed, That the cutting off Non-readers is a partial Destruction of our Constitution, and so seems to carry in it a proportional Inconsistency to our Act of Security. But there is yet one Thing which we must not omit; I believe our Author will not pretend, that any Crime of the present, or after Ministers, can incur a Forfeiture of the *Presbyterian* Establishment, with Respect to the People of this Land. 'Tis provided, that it shall continue unalterable to them throughout all succeeding Generations. The Fault of the Incumbent must not be imputed, and yet by the present Act, if their Ministers shall neglect to read, the Patron may retain, or dispose of their Benefice; they can't call others to serve the Cure, there being no Vacancy. Thus they are burdened with the Maintenance of the Minister; and can any Thing be more hard, or seemingly contradictory to what they imagined secure to them by the Union? Besides, 'tis a Part of the Peoples Claim, that there shall be Sessions, Presbyteries, &c. in their respective Jurisdictions. And the whole of what we have said shows, that they are in no small Danger of losing this as well as other Privileges.

To return to the *Layman*, he observes *p.* 23. concerning the second Penalty, That we hold even our Benefices as independent of the Publication of Civil Acts, as any Gentleman his paternal Estate or Freehold. The common Law is his only Security, and the Treaty of Union no less the Clergies. This Treaty seems to secure their Livings so long as they continue *Presbyterians*, perform the Duties of their Function, and remain undeprived by the Ecclesiastical Jurisdiction.

From the whole of this Argument, says the *Layman*, a very Reverend Father thought the well known Maxim, *That the lawful Commands of lawful Superiors ought to be obeyed*, could not obviate every Difficulty in the present circumstantiated Case.

The Author of *The Lawfulness*, &c. takes it for granted, *p.* 36. 'That when the Magistrate commands a lawful Thing, we must, *for Conscience Sake*, obey him, unless some Circumstance make it sinful.——Inexpediency will never be sustained as an Excuse.'

From the Réasoning in the Letter one can't miss to see, that tho' the Clergy were not so regardless of their Superiors, as to assert, that they had acted any Thing wrong or unequal, yet, in their Apprehension, something more than a mere Inexpediency forbids their chearful Obedience. And you are to understand this *Rev. Father* as meaning so much, when he speaks of the circumstantiate Case: But this Author will pardon me to say, that his Rule, however he may produce an Army of Catechists in his Defence, must fail in Ten thousand Instances; there are numberless Things in themselves not sinful, yet if commanded by the Magistrate, would be such an Infringement upon our Liberties, as that every free *Briton* should make a glorious Stand. Extravagant Positions must be answered by extravagant Examples, and can't be expos'd in too strong a Light. Put the Case, that the Parliament enact, That one or more of the Peers should, upon the first *Monday* of each Month, for a whole Year, repair to the Cross of *Edinburgh*, and there proclaim the present Act; *this is not a sinful Command*, and yet such a degrading of their Character and Dignity, that, rather than submit to the Imposition, they ought to risk their all: But because it may be pretended, that this Supposition is contrary to certain Privileges belonging to Peers, let us bring the Case a little nearer the Point in Hand. Let us suppose our Author a Clergyman, and the Appointment directed to him in such Terms, with the Addition, if the Parliament pleases, of a Herald's Coat, would he think himself, *for Conscience Sake*, obliged to obey?—I'm apt to believe, that as a wise and good Man, he would be afraid of bringing his sacred Office into Contempt, and rather than thus mar his Usefulness as a Minister of CHRIST, would submit to the threatened Penalty; and yet by obeying he is guilty of no direct Sin.—These are only consequential Evils; and if he does not mean, that the Rule must hold in the View of such Events, the Exceptions are so many, that it will destroy the Rule itself. Thus, in the present Case, if any Congregation are so foolish as to think, that reading this Act in Time of Divine Service, is a base prostituting of the ministerial Character and Function; if they shall fancy it so unbecoming and indecent, that a Minister who reads it, is not worthy to preach

preach the Gospel, and so altogether renounce him as their Teacher, ought he, according to the above Concession, to forbear promulgating the Law ; See likewise *Acts* xii. 35,--37. What then becomes of his Maxim, That *Inexpediency will never be sustained as an Excuse?*

The *Layman* proceeds to represent the uneasy Consequence of Disobedience, that by neglecting to read, Ministers will give Countenance to the false Insinuations of their Disloyalty.— They at once throw up their whole Constitution, and ly at the Mercy of the Legislature; and in fine, may expose some People under their Charge to Death itself, by not informing them of their Danger, in case they shall harbour the Fugitive.— The *Letter*, from p. 24 to 30. contains the Brethrens Reply ; and it seems they have in a great Measure removed these Difficulties; for tho' hitherto the above Consequences were urged with the utmost Warmth, as Arguments for Obedience, the Author of the *Lawfulness*, p. 43. thinks proper to overlook them. as Speculations of the *Letter-writer's* about future Contingencies.— From thence to the End it is shown, that the Scruples mentioned in the Conversation were not peculiar to the Brethren then present, but that, all Things considered, almost the whole Ministers in *Scotland* seemed to be much in the same Situation.— To this no Reply is made.

The Reader is now left to judge, how far any Thing advanced by the Authors so often quoted, in the way of Argument, has removed the Objections of the Clergy, stated in the *Layman's* Letter ; and if the Charge against *him* for repeated Mistakes in Point of Fact and Forgetfulness, have had any other Spring but the Ignorance and Mistake of these Gentlemen.

We shall now consider, 2dly, How well they have succeeded in producing parallel Instances, and if these can obviate the Scruples of the non-complying Clergy.

*First*, The Author of the *Lawfulness*, &c. believes every Man will agree to that Part of the Act, declaring them fugitive, who do not appear to stand Trial, because they have twelve Months to surrender themselves, &c. therefore we are to expect no parallel Instances here. This did not seem need-  
ful.



ful, but I'm afraid he will find Difficulty to produce one, now that 'tis demanded. If he has failed in this Clause, we have multiplied Instances of the,

*Second Thing* statuted in this Act, viz. that which concerns *Intercommuning*.

He cites, *p* 10. *Act* 23. *El. cap.* 1. without telling the Nature or Cause of the Act, which is declaring it Treason to withdraw any from the established unto the *Romish* Religion, or for any to be reconciled or withdrawn to these Principles; therefore their Aiders or Maintainers are to be tried as Offenders in *Misprision of Treason*. *N. B.* Misprision of Treason is the Concealment or not disclosing of known Treason, for which Offenders are to suffer Imprisonment, lose their Goods and Profits of Lands, *but not Death*. For this see 14th of *Eliz. Cap.* 3.

You'll observe, that the Law cited by our Author, was for aiding Persons who are actually engaged in withdrawing others from their Allegiance to God, &c. and so thereby endanger our whole *Protestant* Establishment. This Act now in Question is for a Crime past, which cannot possibly happen again; and tho' the guilty Persons or their Aiders should never be discovered, 'tis possible no Danger might thereby befall Church or State: And I'm sorry to say, that even the Act of Queen *Elizabeth* contains some Things not so worthy of Imitation. See *Niel's History of the Puritans, Vol. I. p. 373.*

*P. 11.* He again only cites Part of an Act, I shan't say with Design to mislead the Reader, Act 22d, 9th Year *K. George I.* entituled, 'Act for more effectual punishing wicked and evil-disposed Persons going armed in Disguise, and doing Injuries and Violence to the Persons and Properties of his Majesty's Subjects.'

Whoever will take the Trouble to look into this Law, will observe a remarkable Difference betwixt it and the present Act, particularly with respect to convicting the Guilty, tho' absconded, the Manner of Publication, in order to their Return, &c. In short, by this Law, no Offender can be convicted upon Suspicion, *but by Information upon Oath, and subscribed by one or more credible Persons*, and the King's Order issuing thereon, and publick Intimation made of

of the Persons,--- their Names, Occupations, and Place of Abode, is to be published in a most particular Manner ; besides, these Offenders were publick Nuisances to Society, their Practice daily committed to the Subversion of Property ; and they could not possibly have an Opportunity of being guilty of these Offences, if they were not aided and abetted by the Neighbourhood, who in aiding are *socii criminis*, or Art and Part in the Offence : And this is the plain Reason for the Intercommuning being restricted to the Counties where the Fact is committed ; a Reason that cannot be assigned for the particular Restriction of the Act concerning *Porteous* to *Scotland*, for that Offence is now over, and cannot be reiterated. The Author is in a Mistake, when he supposes the Intercommuning extends to all *England* ; for, as was just now observed, 'tis restricted in every particular County where the Crime was committed. I shall not spend Time in showing his wrong Notion of Hundreds, into which each County is divided ; but besides what has been said concerning the Disparity of this Act to the present, the Name under which it is well known in *England*, and the continued Complaints against it, makes it still more improper for a Rule to us, than that of *Q. Eliz.* But if these Acts are not thought sufficiently convincing, there are two penal Laws given to the People of the *Jews*, which he thinks may afford Satisfaction. The first is taken from *Deut. xiii.* where the Father was bound to delate the Son, the Husband the Wife, &c. in case they secretly intice to Idolatry. The *Layman* observes, That he does not find, even by that Law, that the *Son* was obliged to inform against the Father, or the *Wife* against the Husband, &c. This Author thinks the *Letter-writer* has forgot himself : ' Is it not plain, says he p. 14. that a Father, a Brother, a Husband, and a Friend were obliged not to pity, spare, or conceal a Son, a Brother, a Wife, or a Friend, if any of these were Inticers to Idolatry ?--- To be sure.--- ' And if this does not prove, that the Father, &c. (we must supply his &c. from the above Relations) the Brother, the Husband, the Friend, was to inform, no more can it be inferred from this Clause in the Act, that Persons shall not conceal, aid, abet, or succour them.--- All this is certainly true.--- But where does he find that the *Son* is not

to conceal, or inform against the Father, or the *Wife* against the Husband? Does not the Gentleman begin to conceive his Blunder? The *Letter-writer* is not quite so stupid as to think, that these Words, *Thou shalt not pity, neither spare, neither conceal*, did not amount to their being obliged to inform; but he had observed, *p. 10.* that by the present intercommuning Act, not only the Father was bound to delate the Son, but *N. B.* the Son the Father. Now he observes, That even by this Law of GOD, the paternal Authority seems preserved, tho' he never dreamed, but that by this Law the Father was to inform against the Son, and the Husband against the Wife, and he grants, that perhaps there is not much in the Observation; because it may be argued, that if the Obligation of a Father to a Son is cut off, Why not of a Son to a Father? We have been thus particular to show the Temper of the Author, who never fails to impute his own Inadvertency to the Thoughtlessness of my Friend;—but I suppose by fixing the Intention of the Reader on a Thing where little or no Stress was laid, he designs they should o'erlook the main Argument. For tho' 'tis urged on several Grounds, *p. 11* and *12.* That no Power on Earth could be warranted from this Law, to form such an intercommuning Clause; he has passed these without Observation. I believe indeed it will not be easy to show, That the executing Captain *Porteous*, is a Crime of as heinous a Nature, as enticing Men to give the Glory of the *one God* to another, or that it threatens the Ruin of our Church and State, as much as Idolatry did that of the *Jews*. But while we blame his Forgetfulness, let us acknowledge his Goodness, he strengthens our Argument. 'I'm sensible, (says he) *p. 14.* it may be replied, That the Laws of the second Table must cede to those of the first; that our Duty to GOD must have the Preference of our Duty to Man, and that natural Affection in the foresaid Instance was to be swallowed up in Love to GOD, and to give Place to his Honour; therefore I shall condescend upon another criminal Law, which GOD gave to the *Jews*, &c. we have it in *Deut. xxi. 18.* With respect to this Passage, I shall only observe, That it was so far from being a Force put upon the Father, to deliver up the Son, that 'tis evidently calculated to set Bounds



to the paternal Authority. This Power amongst the ancient *Romans*, was so great, that they might put their Children to Death, as they did their Slaves, without any Process before a Magistrate, which some have taken to be a natural Right, and imagine GOD would not have commanded *Abraham* to kill his Son, had it not been his inherent Power. However this be, *as one observes*, they were not thought proper to be long intrusted with it : For GOD here orders by *Moses*, that it should be committed to the publick Judges, as most disinterested : The Father was by no Means under any Necessity of carrying on such a Process against the Son, but might do in it as he thought proper. At the utmost, nothing more can be deduced from this by Parity of Reason, but that as the Father and Mother, in pure Self-defence, might inform against the Son, while their Life and all were at Stake, so supposing any Set of Men in a Course of actual Rebellion, and their Conduct, if not prevented, destructive of the whole State and Nation, that 'tis impossible the Government can subsist without their being removed : It can only be inferred, that in this Case Parents ought to prefer the common Safety and Well, to all the Ties of natural Affection : But how does this quadrate with the present Case ? Where is there a Foundation for intercommuning under such a severe Penalty ? A Parent may, and ought to deliver the stubborn Child ; but if, through an Excess of Passion, a Weakness of Nature, he hears his Cry, and is moved with his Tears, is it not hard and severe, that he should be considered as equally criminal with the Traitor, and treat in the same cruel Manner ; nay, that his other innocent Children shall all be reduced to Misery : Besides, the rebellious Son was not to be so dealt with upon the first, second, or third Faults, but after a Series of such Crimes, when 'tis morally certain he shall continue in the same Course : Therefore, to make the Case equal, the Murderers of *Porteous* must be supposed guilty of many such Riots formerly, to be *even now* in the same Acts of Wickedness, to have baffled every Hope of their future Reformation, and to have receiv'd more gentle Correction.

As to the Act in King *William's* Reign, anent Reset and Intercommuning, it contained no new Severity, but was rather calculated to remove former Hardships : But let this Act be

what it will, why does our Author suppose, that no Objection against a Thing enacted in that Reign, can come with a good Grace from the Ministers of the Church of *Scotland*? His Reign indeed, on many Accounts, was glorious, and he himself of blessed Memory: But does our Author believe, that he and his Council acted by Inspiration?

I proceed now to that Clause, which we shall call the third of the Act, concerning the Informers receiving a Reward of 200 *l.* who may notwithstanding be Witnesses. Both our Authors have heapt together many Cases, which they suppose *directly parallel*. The *Answer* to the *Queries* asserts, 'That 'tis no leverer than for an Officer of Excise to be admitted an Evidence of a Deforce, of a Bribe being offered him; in all which he is actually a Party concerned, by an Interest in the Seizure, if his Allegation be made good.'

'Tis true, the Excise Officer, tho' the original Informer, may be a Witness, but is not entitled to any Part of the Penalty to be recovered. 'Tis the Person who sues, the Informer or Prosecutor on Record, that is entitled to the Penalty, but is never allowed to be a Witness; — yea, upon Suspicion that a Witness is promised, or *even expects* a Part of the Penalty, or other Reward, the constant Practice is to purge him upon Oath, if he confesses, he is cast.

The Law is the same as to Deforcements; the Person deforced may be a Witness, but then he is not the Informer upon Record, and may be purged and cast in the same Way as above.

As to the Seizure-maker, he may be Informer or Prosecutor, but cannot be a Witness.

Both our Authors instance the Case of notorious Robberies, The Reader, by consulting the 4th *William and Mary*, Cap. 8. and 6th *George I.* Cap. 23. will see these Gentlemens Mistake; neither of these Laws cited, nor any Statute of *England*, so far as we know, allows the Person entitled to the Reward to be an Evidence notwithstanding: So that *Lawfulness*, &c. will be so good as produce his Voucher for this Assertion, 'That in *England*, in the Case of notorious Robberies, there is a Promise of Life to an Accomplice, and a Reward of 40 *l.* to be an Informer and N. B. Witness.' — 'But is not the

the Party robbed in *England*, allowed to be a Witness?—What then? he is reimbursed by the County, whether the Robber is convict or not; so he is a good Witness in the Conviction of such a Person, because he is to gain or lose nothing by the Event of the Cause.—We know only of one or two Instances in *Scotland*, where the Persons attacked by Robbers were admitted Witnesses; in the one Case the Robber got not a Farthing, in the other the Gentleman got no Return of his Money: So that in neither did the Witnesses gain, nor could gain by their Evidence.—In Church Courts Informers are admitted as Witnesses;—but are they rewarded? ‘Magistrates, when the Society for Reformation was kept up, did fine, and otherwise punish Swearers upon the Testimony of Informers.’——What Advantage did accrue to the Witness? Lord *Crossrigg* says he deserves the Character of a Gentleman, &c. who sets himself against the Mob, not only by Information, but *N. B.* Witness-bearing.——Is he to be Witness and Informer at the same Time? Is such a worthy Gentleman to gain *L. 200* by the Cause? ‘By Act of K. William the Blasphemer for the second Fault is to be fined, and the one Half given to the Informer.’——Is Death the Punishment of this second Fault?——Or how does it appear that the Informer is to be a Witness?——In case of contracted Marriages, the Parties nearest Relations are Evidences.—But is this a Matter of Life and Death? are these near Relations to be rewarded? are they not purged of Malice, partial Council or good Deed? In case of Rapes the Parties are admitted Evidences. To what the Querist has observed, I shall add, That supposing her sole Testimony could take away the Life of the Man; Has she over and above a handsome Portion for convicting him? In the Crime of *Hamesucken*, the Complainers who are injured, are admitted as good Witnesses.

The Author himself gives a good Answer, because no other can be had. But is there such a Scarcity of Witnesses, where perhaps some thousands may be got? Or can a Man have sufficient Knowledge to lay a distinct Information, and be himself a Witness, without knowing so much of the Matter, as to point out other Witnesses? Besides, in the Crime of *Hame-*



*sucken*, Can the Complainer bring the Guilty to Punishment, and over and above bring home a rich Booty?—‘The *socii criminis*, as in the Case of Piracy, &c. are admitted Evidences ;’—but they have their Pardon in their Pocket, and are under no Temptation to swear falsely. *This*, says the Author of the *Lawfulness*, &c. ‘is a poor Evasion: How does it free the Civil Magistrate from the Charge of Injustice, in promising such a Reward to a Rogue and a Villain to be a Witness?’—It is not properly a Promise to be a Witness ; the Magistrate finding such a Crime can’t be proven, bestows a Pardon upon one or two of the suspected Persons, and they *being indemnified*, are admitted Evidences, but not *till then* ; so that whether they convict the Person or not, their Life is secure : And this giving the Pardon *prior* to the witnessing, shows the Sense of the Legislature, that a Person under any Byass or Temptation, is not a habile Witness. It may not be improper here to relate the Story of a Person commonly called Captain *Scarlet*, who was taken Prisoner at *Botbwal-bridge*, being of dissolute Character, the King’s Advocate thought him very proper to witness against Lord *Bargeny*, and to engage him, put him in Possession of his Majesty’s Pardon, e’re he was called to witness. After emitting his Oath, he declared, *That he knew not the Pannel, and to the best of his Remembrance had never seen his Lordship.* The Advocate enraged at such Conduct, return’d the Captain to Prison, but was soon obliged to liberate him, least he should be found guilty of wrongous Imprisonment ; and surely, if possible, the Law would have been stretched in so arbitrary a Reign. This shows the great Difference betwixt a Person’s receiving a Pardon *antecedent* to Witness-bearing, and that of the present Case, where it is not bestowed, until he *actually* convict another Person ; and, suppose our Author produce an Instance of this last Kind, will he say, That ’tis equal to this new Law, where the Witness is not only indemnified, but has the superadded Temptation of *L. 200 Sterling* glaring in his Eye, to which he has no Claim, till some one or other is actually convicted.

*Necessity*, &c. tells us, ‘That those who have sworn the solemn League, &c. or have taken the Oath of Abjuration,

'ration, are bound to be Informers.' Are they bribed to this by a Promise of Life? are they to be Witnesses? have they a great Reward? These Things are so widely distinct from the Purpose in Hand, that I can't help thinking they have been misplaced by the Printer, and were originally designed for Supports to the Author's intercommuning Clause.— Thus we have considered these two Gentlemen *exactly parallel* Instances; and yet it does not appear to us from any of them, that the Person who is to gain or lose by the Event of the Cause is admitted Witness; and 'tis still demanded, that they point out a Law, promising a Reward to an Informer, who notwithstanding may be a Witness, and that in a Matter of Life and Death. Let them show, where the Life of another is taken away by two Informers, who are for that Reason indemnified, allowed to witness, and otherwise rewarded. 'Till this is done, *Lawfulness*, &c. may see a Reason for the Ministers of *Scotland* not having complained of such a Law till now, and will not in his abundant Charity be again obliged to call this Objection, *but a Pretence to excuse Disobedience*.

I thought once to have made some Remarks on the Case of Dr. *Atterbury*, &c, which is pointed out as a Proof, that the first Penalty is not *Erastian*: 'An *English* Clergyman because concerned in a Conspiracy in Favours of the *Pretender*, is disabled, and render'd incapable of taking, or holding, or enjoying any Office, Dignity, &c.' therefore because a *Scots* Minister scruples to read an Act of Parliament, concerning the Murder of *Porteous*, containing an intercommuning Clause, &c. 'tis no *Erastianism* to incapacitate him to sit or vote in any Church-Judicatory, even while he may exercise all the other Parts of his ministerial Office in the legal Establishment, and under the Protection of the Government; *such Examples carry along with them their own Answer*.— He says, the *Erastian* Difficulty cannot come with any Grace from those Ministers who have taken the Oath of Abjuration. I doubt much of the Justness of this Reasoning, Ministers may think themselves antecedently bound to take certain Oaths. and give the Government Assurance of their Fidelity,— and that the Penalty annexed cannot disannul this antecedent Obligation; — and yet, seeing they  
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are not under any antecedent Obligation to be Heralds of Civil Laws, they may scruple to go out of their own Sphere, and proclaim an Act of Parliament in Time of Divine Service, which they can't approve of, especially that in the Matter of the Oath they have nothing to do with the Penalties. — Here they must publish them in the most solemn Manner, and thereby not only acknowledge, but teach the People, as we have already shewn, the Parliament's Power and Right to make such Appointments under such Penalties. — He talks much, 'That the Parliament thinks they can do *so* and *so*.' — No doubt Kings and Parliaments can do what they please; 'King James' thought he had Power to turn out Mr. *Robert Bruce*, &c. — But is this Author of the same Mind? — He proves, p. 31. That Ministers may read an Act of Parliament with an *Erastian* Penalty, and yet not approve of *Erastianism*, — by observing, 'That the Assembly of Divines at *Westminster* were constituted after an *Erastian* Model, and yet honest Men, of tender Consciences, who sat and voted in the Assembly, did not think they were approving of the Parliament's *Erastian* Power in modelling this Judicatory in such a Manner. — Is this one of his parallel Cases? — The *Westminster* Assembly were not properly a Judicature, but a Number of Divines called and maintained by the Parliament, to give their Advice in such Things relating to Religion, as the Parliament should propose to them. — His other Proof taken from the *Presbyterian* Church in *Holland*, must appear to every one still more foreign to the Purpose. —

It remains only that we consider his Examples, which respect the Appointment on Ministers to publish this Act; and in p. 19. he speaks of its being usual for Ministers to intimate this and the other Thing, e'er the Blessing is pronounced. — If any Minister entertain their Hearers in Time of Divine Service, with Acts of Justices of Peace, Manfies, Meetings of Heritors, &c. let them answer for their Conduct, tho' 'tis easy to observe a manifest Difference between these Cases and the present. — But we shall pass them all with the *Layman's* Observation, *That if these Instances were of a singular Nature, the Practice is equally wrong.* What our  
Authors



Authors have advanced on this and some other Heads, is not far from the Language of one ripe for Slavery.

*He* condescends, *p.* 18. on the Proclamation of our present Sovereign, for the Encouragement of Piety and Virtue, &c. 'which Ministers are commanded to read, or *cause to be read* at least four Times in the Year, immediately after Divine Service.' Are there no Odds between an Act for promoting Morality, which, as the Querist well observes, every Clergyman, as a Minister of the Gospel, is obliged to recommend to his Hearers in the warmest Manner; for which Reason Ministers were appointed to read it, as the Proclamation itself bears: *It was then lying before our Author*, and is it not strange, that he could discern no Difference betwixt this, and the *Act for the more effectual*, &c. which Ministers, *as such*, have no Concern in.

It is alledged, this Act is intended for the Suppression and Discouragement of Mobs and Riots. No Doubt! But what if a Clergyman should fancy, that the Remedy may prove worse than the Disease; or that, tho' the Government, considering the Light in which this Matter appeared to them, might see very good Ground for framing this Law; — yet weak timorous Men may, from the Account our Author has given of the Case, *p.* 3. and 4. think, that to oblige Ministers for a whole Year to publish from the Pulpit such sanguinary Laws, is not so agreeable to the Character of the Ambassadors of the merciful Jesus, or of the Ministers of the Gospel of Peace, as the Author speaks. His Saying, 'If Persons will not take Warning, who can help it.' That is, if a Father overcome with Compassion, call it a mistaken one, will not deliver his Son to Death, *who can help it.* This does not express the greatest Regard to our Fellow-creatures, &c.

In *this Act*, have Ministers an Alternative to read, or *cause it to be read*; may they publish it after Divine Service is over, and yet obey the Appointment? — If they shall neglect to read it altogether, do they incur no Penalty? This is the Case as to our Sovereign's Proclamation, and we must be allowed to observe, whatever our Author thinks, that these Things make a wide Difference, especially consider-

ing what has been prov'd concerning the particular Nature of the Penalty in the *Act anent Porteous*.

As to the *Proclamation* of the Convention of Estates, *against* owning K. *James*, and appointing publick Prayers for K. *William*, I am not able to see, what Resemblance it has to the Point in Hand: This was a Case on which the Safety of every Thing civil and sacred depended. The Convention designed, that thereby Ministers should declare *their Approbation* of the present Settlement, and no doubt it was a very proper *Test*.—Whoever read the *Proclamation*, was necessarily esteemed a Friend to the Government:—But whoever refused Compliance, was for that very Reason, considered as declaring his Disapprobation thereof; which shows our Author, that both the Conduct of the *Clergy* and *State* expressly say, that a Minister's publishing a Law from the Pulpit, inferrs his *Approbation*. For a further Proof of this, let me ask, If any one who thought it wrong to *disown* K. *James*, and *acknowledge* K. *William* as his Sovereign, could, in a Consistency with the *Sincerity* of a *Gospel-Minister*, have published this *Proclamation*; so that e're it can be number'd amongst our *Author's* parallel Cases, he must allow that a Clergyman's publishing any Law from the Pulpit, inferrs his *Approbation* of that Law, and that the Safety of our *Church* and *State* depend as much on a Minister's approving the *Act anent P. &c.* as the Safety of the *then* Government depended on the *Clergy's disowning* K. *James*, &c. And further, That the Parliament by appointing the Ministers of *Scotland* to publish this *Act*, designed it as such a *Test*.—When the Convention of Estates ordered their *Proclamation* to be read, the *Churches* were all filled with *Episcopal* Ministers, and the Appointment directed only to them. The Penalty annexed shows, that it had no Respect to the *Meeting-houses*; What then does he mean by saying, 'The old stench *Presbyterians*, who had endured the Brunt of the Battle in the late persecuting Reigns, thought it not below them, but their Honour to publish that *Proclamation*.' I won't deny, but some of those in the *Meeting-houses* were *Volunteers* in reading it; but as *Lawfulness*, &c. states the Case, one is led to think, that *Presbyterians*, not *Episcopals*, possess'd the Churches,

Churches, which made a Gentleman say, That this Author's *old stench Presbyterians* were like *Ardencape's Angels*, of the wrong Hue.

I can't express how much I was surprized when reading *Lawfulness and Necessity's* 20th and 21st Pages. Could he have taken a more effectual Method to reflect upon our King and Parliament, than to observe concerning the present Law, That 'something like to this was enjoined the Ministers in the 1600, by King *James VI.* and his Council, in the Matter of *Goury's Conspiracy*. — Does not every one know, that nothing more tyrannical and arbitrary was ever enacted? Ministers are commanded to declare their Belief of a Story, that, as we already observed, *murdered all Probability*, and to publish an Account of the pretended Treason, (for which no good Evidence was given) *even from the Chair of Verity*, as an undoubted Truth to their Flock, and, upon Refusal, inhibited to preach in his Majesty's Dominions, under Pain of Death; unheard of Imposition! But all these Ministers did comply except Mr. *Bruce*; what then? Why does he rake up the Ashes of the Dead? Would he point out the *Failures* of these good Men, (o'er which let a Vail be for ever drawn) as proper Paterns for the Ministers of our Day. — But Mr. *Bruce*, because he could not say he was perswaded of the Truth of it, was banished the King's Dominions: Is he therefore to be condemned? Did he not act an *honest and fair* Part, and is worthy of Imitation? — This is mentioned, that Ministers may *advise* well as to their Conduct, especially the Ministers of *Edinburgh*. *Edinburgh* is the Scene of Action, and they may fall the first Victim. What would he have them to *advise* upon? Shall they figure their lawful Superiors as ready to treat them in the same wicked and tyrannical Manner as King *James* did this great good Man? No, their Thoughts of the Government is different from that of our Author's. — Or shall they, by this Instance of Severity, be forced to a Compliance, against the Dictates of their Mind? By no Means; if they can't get over their Scruples, they ought rather to *obey GOD than Man*, whatever be the Consequence. I shall dismiss this Story by informing our Author, that a *Clergyman* of my Acquaintance, when he considered,



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red, that one must be reduced to the last Shift, e're he produc'd such a *Precedent*, his Scruples were the more encreased; and 'tis ten to one if even NECESSITY, &c. remove them.

Thus we have considered these Instances which our *Authors* have been pleased to call *Parallel*; in our Apprehension they're by no Means such: But suppose they were, how can it obviate our present Difficulties?—In arguing from *Parallels*, 'tis not sufficient to produce a Collection of *Stories*, *Pieces of main'd Acts*, &c. by which 'tis pretended, that in *one* Reign something like this Part of the *Act*, and in *another* something like *that* was enacted, the World would expect one Instance, at least, of its *complex Frame*. And because equal Hardships are liable to equal Objections, 'tis necessary for these Gentlemen to go further and show, that such a parallel Law is in itself *good, reasonable and just*: For it will never satisfy doubting Minds to say, that other Ministers have obeyed an Appointment of the like Nature; they must see with their *own Eyes*, and be treat as rational Creatures: Or, if our Authors incline, they may use *Argument and Reason*, and this will save the Trouble of collecting *Precedents*: Yea, if they please, they may confine themselves to this precise Point, That supposing the Law wrong and unequal, it would still be Duty in Ministers to publish it: In order to this, 'tis necessary they prove, that in the common and natural Construction of Things, a Minister's reading does not imply an Approbation or Acquiescence; and further, that no other Reason should determine his Silence, this is expected, because we have endeavour'd to show, that tho' simple reading did not infer an Approbation, yet on other Accounts, Ministers, rather than publish any Thing that's wrong or injurious to the Conscience or *Liberties* of Mankind, ought to throw themselves on the Mercy of the Legislature.—'Tis likewise demanded, that they'll consider the several Parts of our Argument, e'er they pretend to make a Reply, and not cast up any Thing as a new Discovery, the Weakness whereof has been already exposed.—I'll further put them in Mind, to confine themselves to the literal and plain Sense of *this Act*.

This



This is the only Rule, especially in arguing about penal Laws; therefore if these Gentlemen continue (a) to offer their various and fanciful Explications, I suppose they may write on without any Answers, and possibly without any Readers.

Towards the End of *Lawfulness*, &c. several Proposals are mentioned for Ministers to elude or shift the Law, which, says the Author, 'Are nowise becoming the Honesty of a *Presbyterian Minister*.' In this we heartily agree; and I shall put him in Mind of *one* he has forgot, viz. That some under Pretence of going as far with the Legislature as they can, omit this and the other Clause, and so mutilate the Act that I'm afraid they, as the *Layman* observes, make a Mock of Majesty, and ridicule the highest Powers.

I conclude with this Observation, that seeing those who pretend to publish the Law, follow so many different Methods, it would appear they are not fully perswaded of the *Lawfulness* and *Necessity* of Ministers reading the Act of Parliament, as *thereby* directed.

R. Z.

(a) See *Necessity*, &c. p. 16, 22, 26. *Answ. to the Quer.* p. 12.



# POSTSCRIPT,

CONTAINING

*A few* OBSERVATIONS *upon a* LETTER (*just now published*) *from a* GENTLEMAN *at* Edinburgh, *to a* MINISTER *in the* Country, &c.

THE *Letter* is writ in a gentle Manner, and proceeds, we are perswaded, from a sincere Regard to Church and State; we likewise believe the Gentleman has fairly hinted the Sum of the Argument, so far as consists with his Knowledge; but he seems not to have had Opportunity of knowing the Whole of what pass'd at the Conferences in *Edinburgh*, which were held at different Times; it will therefore the better answer his good Design of giving full Information to Ministers, that we point out what, according to our Information, was further said upon the Particulars contained in his *Letter*, and this we shall do by directing to the Pages of the *Layman's* Letter, and the foregoing Defence, where the Reader will find the Argument stated, according to the reasoning of some in these Meetings. I have likewise just now before me a *Letter* to the Author of the *Lawfulness*, &c. had it come sooner to my Hand, I should have omitted some Remarks contained in the *Defence*, &c. where we seem to coincide. As this Author has put the Argument in a very strong Light, I shall take the Freedom to cite him as we go along.

The *Gentleman's Letter*, from the Beginning to the 5th p. contains an Account of his Design in writing; and in that Page he observes, 'That it was agreed in these Confer-

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ences, or admitted in the Argument; that unless upon Enquiry it had been found to be an unlawful or sinful Thing to read the Statute, it is the Duty of Ministers to obey. This perhaps was admitted in some of their Meetings; but I am told, that in others it was argued, That in many Cases where it was no direct Sin to obey, yet on the Account of consequential Evils, Compliance may be lawfully refus'd, and that perhaps in not one Instance of a hundred, where Men have made a noble Stand for their Liberties; Could they be justified on the above Principle, because in these Cases they might have obeyed without being guilty of a direct Sin? See *Defence*, p. 36, 37. particularly the Case of *Paul and Silas* there cited, and fully argued in the *Letter to the Author*, p. 31.

From p. 6 to 16. the *Gentleman* gives an historical (a) Narration of the Parliament enacting this and the other Law, that respects the City of *Edinburgh*, and suggests what might be the Reason of their Conduct, with what may determine His Majesty to cause the Law to be execute, in case of Disobedience.—As to the Springs of the Parliament's Conduct, we have nothing to say.—What His Majesty in his Goodness will do, we know not; these don't affect the main Argument; such Consequences we are persuaded will determine no Man to go contrary to the Dictates of his own Mind.—Let us leave Events to the Care of Almighty God.

P. 16. He observes, That nothing was objected to the first Part of the Act, that affects the Rioters or Fugitives themselves. As I'm informed, this Gentleman is certainly in the Right; but there are Objections against it notwithstanding. See the *Defence*, p. 19 and 20.

P. 16, 17 and 18. He gives a short State of the Clergy's Difficulties concerning the intercommuning Clause, — the Reward to Informers, &c. — the Appointment on Ministers, — and the Penalties annexed to their Neglect.

The Readers will see these, and other Objections represented by the *Layman*, the *Defence*, the *Letter to the Author*, and *Queries*, &c.

At

(a) As to what is said at the Foot of the *Gentleman's* 12, and Beginning of 13, 20, 21 p. compare with the *Letter to the Author*. p. 19.



At the Foot of p. 18. He does the Justice to the objecting Clergy, to say, That 'they by no Means compare King James's Declaration with the present Act,' a Favour denied them by the Author of the *Lawfulness*, &c.

P. 19. The *Gentleman* yields, 'That a Case may be supposed of a Law enacted so inconsistent with the Laws of GOD, or of *natural Justice*, that a good Man would rather lay down his Office in the Society, than be concerned — as a Minister in publishing it.' So far he allows a Minister's Publication to imply an Acquiescence; or that at least, for other Reasons, he should not publish a Law contrary to natural Justice. But then says, p. 20. 'This must not be carried so far, as that the Subjects can take upon them — to judge of the Equity or Expediency of every Law that passes.' And for obviating the Difficulty of the intercommuning Clause, gives in p. 21, 22, 23. Instances, where *ex maioris moribus*, Laws have arisen — severe and sanguinary.' And adds, 'That there is no End of the Subjects discanting upon the Equity of Laws; — That the Legislature are the only competent Judges; That Subjects, whoever they are, when commanded to notify them, can't be permitted, consistently with the Order of Society, to say, The Law, in our Opinion, is unjust, and we will have nothing to do with it.' To this 'tis replied,

That Penalties are a Part of a Law; that Laws may become unjust by their Sanctions, as well as their Commands; that the Publication, in either Case, is equally criminal: And the *Gentleman* allows, that the Publication of a Law directly contrary to natural Justice, is not proper Work for any Man. See the *Layman*, p. 9, 10, 20, 21. *Defence*, p. 8, 9, 10, 11. 'Tis further argued, That the Case differs widely, when the Appointment extends to Men whose proper Office it is not to publish the Law, that they, Ministers especially, should be satisfied of the Laws being good and reasonable. 'Tis not alike dangerous to Society, that before one go out of his own Sphere to publish a Law, he considers whether it be agreeable to his Sentiments or not, because should he decline, there are others more proper for the Purpose. See *Letter to the Author*, p. 10, 11, 18 19. *Layman*, p. 6, 7, 8. *Defence* 6, 7, 8. Therefore, if

if this Reasoning be just, e're a Minister can be satisfied to publish the intercommuning Clause, it seems necessary to prove, not only that severe Laws may be made, and Intercommuning may in certain Cases be lawful, but that 'tis fit and necessary in the present, even under the Penalties of Death and Confiscation, &c. The Reader is desired to consult the whole of what is said concerning Intercommuning in the *Queries, Letter to the Author, Layman and Defence*.

The *Gentleman* in the fore-cited Pages mentions the Intercommuning of the *Waltham Black Act*; to this see an Answer, *Defence* p. 38.

He further cites Act of Parliament of *Scotland*, July 19th 1690, to prevent the murdering of Children; but this was appointed to be read in all the Parish-churches, by the *Reader* of the Parish, not by the Minister, nor in Time of Divine Service, passing other remarkable Differences, since the *Gentleman* is so ingenious as not to propose it as a Parallel,

P. 24. he observes, That the Reward to Informers is no new or unknown Thing in the Law of *Scotland*, and cites Act 1661, imposing Fines upon *Swearers*, &c. the Half whereof to be given to the Informer and Prosecutor; but does not pretend, that this Informer was to be a Witness, far less does he aver, (with our other Authors) that he can point out a Law where the Informer is indemnified, and allowed to witness, for taking away the Life of another, and also receive 200 l.

At the Foot of this Page he cites the 21st Act 1567, which enacts, that *Resets and Intercommuners with Thieves, in coming to, or passing from their theftuous Deeds, shall be called therefore at particular Diets criminally, as Art and Part, &c.* This at once shows, as we had Occasion formerly to observe, that the Legislature in Intercommunings, have hitherto considered the real Criminals in the immediate Acts of Wickedness; and therefore intercommune sinners, that those unlawful Designs may be defeat, and so the Persons who harbour them are punished as *socii criminis*, because assistant, and sometimes indispensibly necessary to them in their accomplishing the Deed. I know not, but I might instance the present Case, according to the Proverb, *If there were no Reset, there*

*there would be no Thief:* But this is nowise applicable to the *Clause* in Question. *Porteous* is gone to his Place.

As to the Order upon Ministers, &c. mentioned by the *Gentleman*, p. 25th, See the *Layman*. p. 6. 7. 8. 28. 29. *Defence*, p. 5th. — Since the *Act for more effectual, &c.* contains Hardships on the Fugitive, a Clause relating to Informers, Ministers, &c. I can't as yet join with the *Gentleman*, That even supposing there was nothing directly sinful in the *Act* itself, that the Order on Ministers amounts only to this, *That they should give Notice to the People to beware of concealing or harbouring the Fugitive*, besides the Silence of Ministers cannot endanger them, *Layman*, p. 28.

As to his Argument drawn from Charity, see it retorted, *Letter to the Author*, p. 18.

P. 26. He mentions it as an ordinary Thing to read Papers from the Pulpit, &c. See *Defence*, p. 46. if Ministers would have obeyed this *Act*, suppose it had come from the Magistrates, as he thinks in the same Paragraph, they are certainly much to blame, seeing the *Act* contains a Number of very different Things, besides warning intercommun'd Persons of their Danger: *His Instance of the Pestilence* will not hold.

When he says, p. 27. That if a Law is in Force, and will be so whether it is published or not, whether it be *right* or *wrong*, it can be no *Crime* in any Man to give Notice of it, &c. I can't so well reconcile this with what is allowed p. 19th, and must be forgiven to differ, until the Reasoning in the Pamphlets upon this Head to which we have referred, is answered, *Layman*, pages 20, 21, 23. *Defence*, p. 9, 10, 11.

As to the Sanctions on the Ministers, I refer to the Places last cited.

Concerning the Whole of this *Gentleman's* 25, 26, 27 Pages, vide *Letter to the Author*, p. 9, 10, to the 19.

With respect to Civil Establishment granted to all Ecclesiastical Judicatories, p. 28. see *Defence* p. 27, 28.

In the same Place, and p. 29. He answers to what is objected, That by the present *Act* there may be a Cessation of *Presbyterian Church Government*,

*First,*



First, That the Objection was founded on Lenity, and that it sounds somewhat odd to say to a Superior, *Ye might have turned me out altogether for this first Trespass, but you could not suffer me to continue a Minister of the established Church, without enjoying all the Offices and Privileges of such.* I shall beg Leave to observe, that the objecting Clergy by no Means think their Neglect of reading the Act of Parliament would be a sufficient Cause of turning them out of the Church altogether; so that they can't consider the present Penalty as a Piece of Lenity. They proceed on this Principle, *That for no Offence whatever ought any Authority to inflict such a Penalty, as might destroy a Constitution unalterably settled;* to prevent this, they imagine, that if Ministers offend as Subjects, the Civil Magistrate may punish them as such; if, as Clergymen, their own Peers; and in case their Crime is of such a Nature, that their being continued Members of the established Church would be destructive to Society, then some of the Clergy allow, that the Government may at first Instance turn them out of the Church.—Others say, That according to *our* Security, it can only be done by Consequence; and that the Principle in Law and Philosophy, *majori inest minus*, does not hold here.

Vide *Letter to the Author*, p. 21,—26. *Defence*, p. 31, 35. where 'tis also shown, that the Objection is not, as the Gentleman thinks, p. 29. too refined, or founded on an extravagant Supposition, but that in Reality, if the Law is put in Execution, there must be a Cessation of *Presbyterian* Government, not above six or seven (as we hear) having obeyed the Act as *thereby* directed. Neither does the Supposition depend upon Ministers disobeying the first, and obeying all the rest; for should they neglect to read altogether, there is Ground to think they are nevertheless the legal Ministers of this Church. And 'tis further argued in the forecited Places, that tho' all don't disobey, there will still be a Ruin of our Constitution in Proportion to the Number of Transgressors, which seems equally contrary to our legal Security.

As to what the Gentleman observes concerning the second

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Penalty,

Penalty, p. 29,—33. vide *Letter to the Author*, p. 26,—30. *Layman*, p. 23.

He instances Ministers being obliged to take the Oaths of *Allegiance* and *Abjuration* under the Penalty of Depreciation. To this 'tis answered, That Ministers who take these Oaths consider themselves as under an *antecedent* Obligation to give Assurance of their Fidelity, but are under no such Obligation in the present Case; see this explained, *Defence*, p. 27, 45, 46.

The *Gentleman* supposes that there can be no good Reason assigned of the Difference of the two Cases, or why it should be lawful or competent to deprive a Minister for not swearing Allegiance to the King, and yet not lawful to deprive him for not giving Obedience to the whole *Legislature* in a particular Instance, &c. He further notices, That *Loyalty* or *Allegiance* includes not only a sincere Acknowledgement of the *King's Title*, but comprehends also actual Obedience to his *lawful Commands*. I'm perswaded the Author of this Letter is too good a Reasoner, not to see that this Principle may soon be carried too far.—Sure he does not think that every Act of Disobedience will warrant the Magistrates depriving a Gentleman of his *Freehold*, or a Minister of his *All*; therefore, e're his Observation (allowing it at present to be good in general) can be applied to the Case in Hand; it will be necessary to show, That Ministers taking an Oath, wherein they themselves are *alone* concerned, is the same with their Publication of a Law, and its Penalties too, to their several Congregations.—That Ministers Stipends depend as much on the Publication of civil Acts in Time of Divine Worship, &c. as on their taking proper Oaths to the Government;—That the reading the Act concerning *Porteous in all its Punctilios*, is as good a Test of Loyalty as the *Assurance*, &c. or at least a necessary Consequence thereof;—That a Minister's refusing to obey the one, makes him as bad a Subject, as that of the other;—That they are under the same Obligations to both;—That Deprivation is a just Punishment of a Minister's Neglect of publishing, &c.—That his reading is no Way unlawful;—That it does not infringe on his Liberty, or bring along with it such other Consequences as make it unreasonable to obey.

From

From the 34th Page to the End of the Letter, the Gentleman endeavours to remove the Objection arising from the great Offence that the reading of this Act gives the People ; and very justly observes, That some Pamphlets have been published to foment the Dissatisfaction. I am perfectly of his Sentiments, that where Ministers see it *Duty* to obey, no Consequence whatever ought to discourage them : And I believe the *Gentleman* will agree, that if they can't, in a Consistency with the Apostle's Rule, *Whatsoever is not of Faith is Sin*, yield a chearful Obedience, nothing that pass in Parliament, or any Apprehension of the threatned Penalties, should fright them in to a Compliance. And 'tis certainly true, that when a Clergyman has many Scruples about publishing this Act, the Offence which it must necessarily give, not only to the *unthinking Rabble*, but perhaps some of the best and wisest, ought to have its own Weight. The scandalizing of Christians is not a Matter of Moon-shine, nor will it sit easy on the Mind of one who believes the Doctrine of the New Testament, and knows, that if he once become contemptible, he can be no longer useful as a Minister of the Gospel.

Abstracting from the Authority enjoining this Act to be read, it has been often used a separate Argument.—As that the People of *England*, without Ground, fancy the *Scots* Clergy are disloyal and *Enthusiasts* ; therefore they ought to publish the above Law :—But the People of *Scotland* fancy, that by so doing, they would give up with *Presbyterian* Principles, therefore they ought not to comply. One *Fancy* seems to be a tolerable good Answer to another. To whom do Ministers of this Church, under God, owe their present legal Establishment, but to the Inclinations of the People of *Scotland* ? Are they for this Reason to be intirely disregarded ? Is this a grateful Return ?

It has been shown in the *Defence* concerning the Part of the Act which relates to the Rioters, that the same Methods are not taken for preventing the Innocent from being Fugitive, as in Cases where the Consequences of Fugitation are equally fatal. And I had almost forgot to observe, that this peculiar Hardship extends to the intercommuning Clause. I can scarce without Tears, suppose a loving Father receiving his dutiful Son  
with

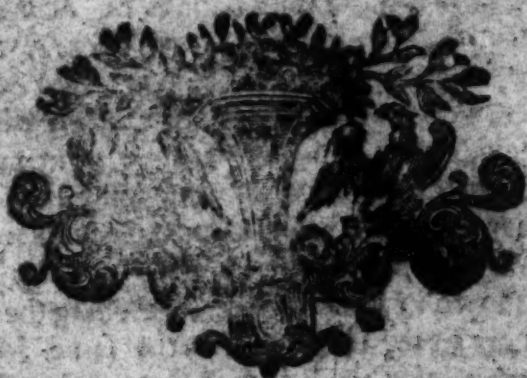


with Joy and Pleasure, after a dangerous Voyage, when in the midst of these Endearments, an Officer of the Justice knows that he is one of the Fugitive, and now the Father must give up the best of Sons, the Support of his old Age, the most innocent Creature alive, to an untimely Death: figure their mutual Consternation, the Horror, the Agony of Mind! Ah! short-liv'd Joy, lasting Pain, mournful Parting: What follows is too frightful to behold, too painful to narrate.

In short, The Difficulties about the Act seem not to be trivial, tho' considered separately, but they acquire greater Strength when joined and put altogether.

R. Z.

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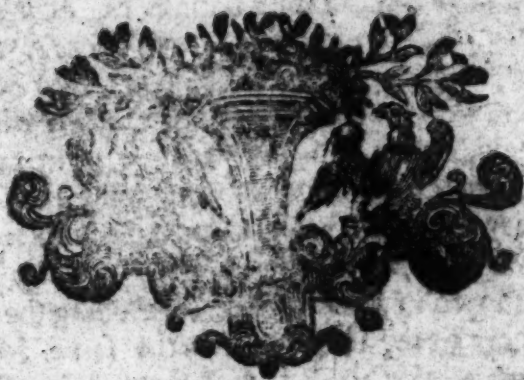


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